

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois
corporation,

Plaintiff,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant.

Case No. 2:20-cv-00882-MLP

DECLARATION OF AMBIKA
KUMAR IN SUPPORT OF
MICROSOFT CORPORATION'S
OPPOSITION TO
PLAINTIFF/COUNTERCLAIM
DEFENDANT'S
CONSOLIDATED MOTION FOR
SUMMARY JUDGMENT

I, Ambika Kumar, declare:

1. I am a partner with the law firm Davis Wright Tremaine LLP, counsel for Defendant Microsoft Corporation in this action. I make this declaration from personal knowledge and a review of the files and records in this matter.

2. I attach as **Exhibit 1** a true and correct copy of excerpts from the deposition of Martin O'Donnell taken in this case on August 3, 2021.

3. I attach as **Exhibit 2** a true and correct copy of Exhibit 5 to the deposition of Martin O'Donnell taken on August 3, 2021 (Bates-numbered ODS 003165 to 3166).

Confidential information that the court does not need to consider has been redacted pursuant to Local Civil Rule 5(g)(1)(B).

4. I attach as **Exhibit 3** a true and correct copy of Exhibit 10 to the deposition of Martin O'Donnell taken on August 3, 2021 (Bates-numbered ODS 000427 to 430).

1 5. I attach as **Exhibit 4** a true and correct copy of excerpts from the deposition of
2 Michael Salvatori taken in this case on August 4, 2021.

3 6. I attach as **Exhibit 5** a true and correct copy of a document produced in this case
4 Bates-numbered MSFT_00000149.

5 7. I attach as **Exhibit 6** a true and correct copy of a document produced in this case
6 Bates-numbered ODS 004639 to 4640.

7 8. I attach as **Exhibit 7** a true and correct copy of excerpts from the deposition of
8 James Charne taken in this case on September 23, 2021.

9 9. I attach as **Exhibit 8** a true and correct copy of excerpts from ODS's Rule
10 30(b)(6) deposition taken in this case on August 31, 2021.

11 10. On August 10, 2020, Microsoft propounded Request for Production No. 33,
12 which requested that ODS "produce in native format all music, audio, and other electronic files
13 created in connection with the production of the music you delivered to Microsoft under the
14 ICA." ODS responded that "[a]ll music, audio, and other electronic files ... would have been
15 captured by David Stenhouse's forensic imaging of ODS's devices and produced to Microsoft.
16 Thus it is already in Microsoft's possession." But ODS had not produced any audio files. And
17 on October 7, 2021, Mr. Stenhouse, a forensic computer expert, testified in his deposition that
18 he had excluded audio files from his search. Microsoft renewed its request that ODS produce
19 the audio files. ODS's counsel, Gabrielle Lindquist, responded that ODS would provide
20 Microsoft with the audio files. When that did not happen, I followed up with Ms. Lindquist
21 and Mr. Lorbiecki again. Although ODS eventually produced some audio files, the production
22 does not contain the MacWorld track or the audio files that ODS delivered for Halo 1 or Halo
23 2.

24 11. I attach as **Exhibit 9** a true and correct copy of ODS's Answers and Responses
25 to Microsoft's Fourth Set of Requests for Production, which include ODS's response to RFP
26 No. 33.

1 12. I attach as **Exhibit 10** a true and correct copy of excerpts from the deposition of
2 David Stenhouse taken in this case on October 7, 2021.

3 13. On July 24, 2020 Microsoft propounded Request for Admission No. 1, which
4 asked ODS to admit “the parties’ agreement governing composition of and compensation for
5 the Halo Music” is contained in the ICA, Amendments, and Confirmatory Agreement.
6 Microsoft also propounded Request for Production No. 1, which sought “all documents
7 referenced in, or that You referred to or relied on, in forming Your answers to any ... Requests
8 for Admission propounded by Microsoft.” ODS admitted RFA No. 1 “except to the extent that
9 the License Agreement between Bungie Software Products Corporation and ODS (dated March
10 22, 2000) has attenuated the rights received by Microsoft through some impact.” However,
11 ODS did not produce any documents other than the Agreement itself showing the parties took
12 steps to implement the Agreement, such as invoices or receipts showing ODS or Bungie
13 followed the agreement’s compensation schedule. ODS also did not produce any documents
14 suggesting Microsoft was aware of the Agreement or assumed the Agreement.

15 14. On July 24, 2020, Microsoft propounded Request for Production No. 8, which
16 called for “all agreements or contracts between Microsoft and Marty O’Donnell.” ODS
17 produced only a copy of the Microsoft Employee Agreement between Microsoft and Mr.
18 O’Donnell, dated July 31, 2000. ODS did not produce any other agreement between Microsoft
19 and Mr. O’Donnell. I attach as **Exhibit 11** a true and correct copy of Exhibit 1 to the
20 deposition of Martin O’Donnell taken on August 3, 2021 (Bates-numbered ODS 000504 to
21 508), titled “Microsoft Corporation Employee Agreement.”

22 15. I attach as **Exhibit 12** a true and correct copy of excerpts from ODS’s Fourth
23 Supplemental Answers and Responses to Microsoft’s First Set of Interrogatories, Requests for
24 Production, and Requests for Admission, which include ODS’s responses to RFP Nos. 1 and 8,
25 and RFA No. 1.

26 16. I attach as **Exhibit 13** a true and correct copy of Exhibit 47 to ODS’s Rule
27 30(b)(6) deposition taken on August 31, 2021 (Bates-numbered ODS 005154 to 5162).

18. I attach as **Exhibit 15** a true and correct copy of a document produced in this case and Bates-numbered ODS 004999.

I declare under penalty of perjury that the foregoing is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2022.

s/ Ambika Kumar

Ambika Kumar

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC.,)
an Illinois corporation,)
) Case No. 2:20-cv-00882-MLP
Plaintiff,)
)
v.)
)
MICROSOFT CORPORATION, a)
Washington corporation,)
)
Defendant.)
_____)

VIDEOTAPED DEPOSITION OF MARTIN O'DONNELL

APPEARING REMOTELY FROM

CLARK COUNTY, NEVADA

August 3rd, 2021

at 9:06 a.m.

REPORTED BY:

Gina J. Shelton, CCR No. 787

APPEARING REMOTELY FROM CLARK COUNTY, NEVADA

1 REMOTE APPEARANCES:

2 For the Plaintiff:

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8 For the Defendant:

9 PETER J. ANDERSON, ESQ.
10 XIANG LI, ESQ.
AMBIKA KUMAR, ESQ.
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Seattle, Washington 98104
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15 Also Present: Aaron Torres, Remote Video Technician

1 Q. What unions are you a member of?

2 A. American Federation of Musicians, Screen Actors

3 Guild and AFTRA, American Federation of Television Radio

4 Artists. Screen Actors -- SAG and AFTRA I believe are

5 now merged.

6 Q. Uh-huh.

7 A. I'm also a member of ASCAP, which is association

8 of -- society of composers, authors and publishers.

9 Q. Have you ever held office in any of those unions
10 or ASCAP?

11 A. No.

12 Q. Have you ever written any books dealing with
13 video game industry or the music industry?

14 A. Not yet.

15 Q. Okay. Have you ever written any articles about
16 the video game or music industry?

17 A. I have not written any, per se. I have been
18 interviewed many times or I've been part of recorded
19 conversations or interviews that ended up being printed
20 as articles.

21 Q. Okay. What was your first job after graduating
22 from SC?

23 A. My very first job after graduating was as a grip.

24 Q. Was that for a studio or independent production?

25 A. Yes, in Chicago. Oh, I'm sorry, it was a studio

1 sorry, just to expand on that. I was still owner of ODS
2 with Mike. And so I had -- at that point I was an
3 employee of Bungie and still owned O'Donnell/Salvatori,
4 Inc.

5 BY MR. ANDERSON:

6 Q. When did you first start working on what became
7 the Halo music for Microsoft's first Halo game?

8 A. July of 1999.

9 Q. And was that as a outside contractor to Bungie?

10 A. Yes.

11 Q. And I take it Bungie was acquired by Microsoft?

12 A. Yes.

13 Q. When was that?

14 A. In -- let's see, possibly May or June of 2000.
15 I'm not sure I remember exactly what month. Some --
16 some -- early summer 2000 I believe.

17 Q. Shortly after you became an employee of Bungie?

18 A. Yes, almost -- I think they made -- I -- they
19 literally made the offer to buy Bungie 10 days after I
20 joined Bungie as an employee.

21 Q. Okay.

22 A. When they made the offer. I don't know when we
23 accepted it or Bungie accepted it. I can't remember,
24 soon.

25 Q. When you became an employee of Bungie prior to

1 Microsoft's acquisition of Bungie, what were your duties
2 and responsibilities?

3 A. Yeah, I made up the -- the title and the job
4 description, I was audio director.

5 Q. And what were your responsibilities as audio
6 director?

7 A. Audio director I was the one who basically had
8 the vision for audio on the project. Which meant I made
9 the decisions about music, dialogue, voice over, actors,
10 sound design, the way it was implemented in the game and
11 how it was finally mixed. Everything that had to do
12 with audio. The way I used to describe it is that
13 everything that came out of the speakers was my
14 responsibility.

15 Q. When did your employment with Microsoft end?

16 A. Officially I believe it ended July 7th, 19 --
17 2007.

18 Q. Why did it end?

19 A. We as a group of -- we were obviously employees
20 of Microsoft, but we were a business unit called Bungie,
21 which I always kind of thought was a little fictitious.
22 But for branding purposes it helped the fans realize
23 that it was still Bungie making Halo and not Microsoft.

24 We always talked about basically trying to get
25 our independence back from Microsoft and make the games

1 that we wanted to make, the way we wanted to make them.
2 So we had discussions starting I believe in 2002 and '3,
3 way early seven of us essentially who were former heads
4 of Bungie prior to the Microsoft acquisition started
5 negotiations and talks with Microsoft about becoming
6 independent again.

7 And that finally came to fruition in July of
8 2007. That wasn't really -- did you ask me why or did
9 you ask me how? Sorry.

10 Q. That's okay. I asked you why.

11 A. Yeah, I would say the real issue with that is
12 that we got to the point where we -- I think as a group
13 we enjoyed being able to make our own creative decisions
14 and not being dictated to by corporate people.

15 Q. When you say we as a group --

16 A. Yeah.

17 Q. -- who -- who comprised the we?

18 A. Well, that group changed over time a few -- in a
19 few ways. I think the original group was -- do you want
20 me to name them?

21 Q. Yes, please.

22 A. Okay. Okay. Let's see if I can do that.

23 Charlie Gough, G-o-u-g-h. Jason Jones, me,
24 Chris Butcher, B-u-t-c-h-e-r. I believe at the
25 beginning Joe Staten, S-t-a-t-t-e-n, was in there, maybe

1 mean by that?

2 A. Yeah, I don't -- it's not called library. What's
3 it called? It's catalog, sorry. It's your ASCAP
4 catalog. So it's -- it's things that you've registered
5 that ASCAP is keeping track of so by name --

6 (Cross talk.)

7 BY MR. ANDERSON:

8 Q. Oh, I'm sorry. I thought you were done, my
9 apologies.

10 Did I cut you off?

11 A. No, I think I just threw -- had a throwaway line.

12 Q. Okay. When you said -- when you referred to
13 consulting your ASCAP library, did you mean going to the
14 ASCAP site and putting your name in to see everything
15 that you're credited on?

16 A. Yes.

17 Q. Okay. What were your duties and responsibilities
18 when you were first employed by Microsoft?

19 A. That's an interesting question. They -- they had
20 called me I believe audio lead and at the time the only
21 job description that Microsoft had for audio lead had
22 something to do with people who worked with telephony or
23 simple sound effects for menus, software menus.

24 So they -- there was no -- if you're asking me
25 if -- if there was some formal job description there

1 wasn't. What I basically did was I -- I continued to do
2 what I had been doing with Bungie, which was audio
3 director.

4 Q. Did your duties and responsibilities at Microsoft
5 ever change?

6 A. I don't -- they sort of expanded, you know, there
7 were times where suddenly I was the one to fly to Los
8 Angeles to be at parties with young actors and actresses
9 and promote Halo. I -- that was something I wasn't
10 anticipating, but it was fun. But I was always audio
11 director in my head.

12 Q. Okay.

13 A. I'm not sure if I ever was able to convince
14 Microsoft to give me the title audio director and I
15 don't believe at any point in my employment with
16 Microsoft did we clarify a job description, not to my
17 recollection.

18 Q. Did you have a formal title at Microsoft as audio
19 lead that was just never changed?

20 A. That's what I think. I don't think they ever
21 changed it. I think they always just -- I think in
22 Microsoft's accounting they had audio lead next to my
23 name.

24 Q. Did you have Microsoft business cards?

25 A. Yeah, I'm sure I did. Although -- no, I don't

1 A. I think it was 90k a year.

2 Q. Did that change over time?

3 A. Yeah, it went up.

4 Q. And what was the highest compensation you were
5 paid at Microsoft?

6 A. I don't remember. It wasn't -- it was I'm pretty
7 sure below 150, might have been 120, I don't know.

8 Q. And did you get bonuses?

9 A. Yes. I'm not sure if they were bonuses. After
10 Halo 1 shipped we all got a little something extra, if
11 you want to call that a bonus. It wasn't something we
12 knew what it was tied to. And then after we started
13 negotiating with them about sharing profits that was our
14 first negotiation with Microsoft was we were like, hey,
15 we would love to have some profit sharing.

16 So I think there was a deal that was made for
17 Halo 2, which shipped in 2004 that was -- I'm not sure
18 if it would be called a bonus or profit sharing. I
19 think -- I think it was technically profit sharing, but
20 I might be wrong.

21 Q. Did it apply to everyone in the Bungie group that
22 had worked on Halo 2?

23 A. Yes.

24 Q. Is it correct that you were a Microsoft employee
25 when Halo: Combat Evolved and its music was completed

1 and shipped?

2 A. Yes.

3 Q. When was Halo: Combat Evolved completed and
4 shipped?

5 A. November 2001.

6 Q. And just in summary what was your role in
7 creating the music for Halo: Combat Evolved?

8 A. I co-wrote it with Mike Salvatori and produced
9 it.

10 Q. Was anyone else involved in the creation of the
11 music for Halo: Combat Evolved?

12 A. Halo: Combat Evolved. I might be wrong, but I
13 believe the only composers and producers on that were me
14 and Mike, Mike Salvatori and me.

15 Q. Was Mr. Salvatori paid for his work on
16 Halo: Combat Evolved?

17 A. Yes.

18 Q. How was he paid?

19 Let me rephrase that because that's a terrible
20 question.

21 Who paid him?

22 A. I believe O'Donnell/Salvatori paid Mike.

23 Q. Do you know how much?

24 A. I do not remember.

25 Q. Were there any --

1 A. My memory is that there was -- there was
2 something that O'Donnell/Salvatori invoiced Microsoft.

3 Q. Were there any Microsoft music supervisors, music
4 editors, mixers, engineers that were involved in the
5 creation of the music that appears in Halo games --
6 excuse me, I'm sorry -- Halo: Combat Evolved?

7 A. No, not to my recollection. I don't even know if
8 there were any such positions at Microsoft during
9 that -- those years.

10 Q. Who engineered the recordings that appear in
11 Halo: Combat Evolved?

12 A. Some of them were engineered by -- everything was
13 essentially engineered by Mike Salvatori. There was a
14 studio built in Bungie's site in Redmond that I did a
15 bunch of stuff at, but the final -- usually in some way
16 I would send those things back to Mike for some sort of
17 final touch that he would do.

18 Q. Did anyone else work on those recordings other
19 than you and Mr. Salvatori?

20 A. No.

21 Q. Was there a final mix that was done?

22 A. Yes.

23 Q. And who did the final mix?

24 A. Mike and me together. Most of the time it was --
25 somehow we figured out a way to -- we -- whatever, the

1 two of us mixed it.

2 Q. Were the recordings mastered?

3 A. You know, that's a good question. I can't
4 remember when I started mastering. They weren't
5 mastered for Halo: Combat Evolved. We might have
6 mastered them for the soundtrack, which is a separate
7 standalone release. Once again that's a different SKU,
8 that's a different thing. I don't think we mastered
9 that first one, I think -- outside. I think Mike and I
10 mastered that.

11 I think I flew back to Chicago and we put
12 together all the pieces from Halo: Combat Evolved that
13 we wanted to present to the public and we mastered them
14 ourselves.

15 Q. Were the other soundtrack albums for Halo were
16 they mastered by someone other than you or
17 Mr. Salvatori?

18 A. That's sort of a tricky question. There was a
19 mastering studio, I can't remember when I started using
20 it. There was a mastering studio that I started using
21 at some point. And what that studio does is they do the
22 mastering process while I'm sitting there saying yes and
23 no. So essentially it's still my decision on how the
24 mastering is.

25 And at some point I think later on maybe with

August 03, 2021

1 with the first amendment?

2 A. No.

3 Q. Did you consult a lawyer in connection with the
4 first amendment?

5 A. No.

6 Q. Did you ask for any other changes to the ICA
7 beyond the change that is mentioned in the first
8 amendment?

9 A. I'm just looking at this again. I don't remember
10 discussing any other changes. This was -- I'm pretty
11 sure this was all about starting a Bungie store once
12 again for the public.

13 Q. When was work started on the music for
14 Microsoft's Halo 2 game?

15 A. The day we shipped Halo 1. Soon after shipping
16 Halo 1, probably the beginning of 2002. I think we
17 actually even started literally -- I mean, we -- we --
18 we had gone gold in fall -- in like September. We were
19 done with everything on Halo 1 in September. And by the
20 time we were back in the offices after trying to take a
21 break I'm pretty sure we started working on the initial
22 concepts for Halo 2. So possibly even end of 2001,
23 certainly beginning of 2002.

24 Q. When was the music for Halo 2 -- the Halo 2 video
25 game completed?

August 03, 2021

1 A. 2004.

2 Q. Do you remember when in 2004? Spring? Fall?

3 A. When you say completed it was fall of 2004.

4 Q. Okay. Was a soundtrack, an OST released for
5 Halo 2 music?

6 A. Yes.

7 Q. And when was it released, do you recall?

8 A. Yeah, on that one I believe we had finished some
9 music early. There's a long story there. So I'm not
10 going to go into it. I believe the goal was to release
11 Volume 1 of Halo 2's soundtrack with -- at the same day
12 and date of releasing the game for Halo 2.

13 So I can't remember -- I can't remember the date
14 of that. I think it might have been -- if you -- if you
15 have the date that would rec -- help my recollection. I
16 think it was -- I know it was fall of 2004.

17 Q. Yeah, I'm not going to say that was wrong. I'd
18 have to look but I thought maybe you remembered off the
19 top of your head.

20 A. Well, actually, wait a minute. Yeah, that was
21 one where he had a tattoo. November 9th. I think it
22 was November 9th, 2004.

23 Q. Okay. What was your --

24 A. Peter Moore tattooed the date on his arm. That
25 was historic, you can look it up.

August 03, 2021

1 Q. I'm sorry, who -- who tattooed the date?

2 A. Peter Moore who was at that point had replaced
3 Ed Fries as head of Microsoft Game Studios.

4 Q. Okay. What was your role in creating the music
5 for Halo 2?

6 A. I was the audio director and when it came to the
7 music I worked with Mike Salvatori as part of
8 O'Donnell/Salvatori to create the music. I also
9 directed some outside contributors, some bands like
10 Breaking Benjamin, Incubus, I hired Steve Vai because he
11 was a friend of Nile Rodgers. Nile Rodgers' company was
12 the one who had released -- distributed the Halo
13 soundtrack and then he came and gave me some suggestions
14 for some extra musicians that I could use for Halo 2.
15 So I was the composer and producer along with
16 Mike Salvatori and helped produce some of the other
17 outside musicians that contributed.

18 Q. Okay. And from your memory they included
19 Breaking Benjamin, Incubus and Steve Vai?

20 A. Yes, and I think John Mayer was in there too.

21 Q. Anyone else involved in the creation of the music
22 for Halo 2?

23 A. I'm trying to remember when Stan LePard started
24 to actually do more. He was a outside contractor that I
25 hired to do -- help with orchestration. I don't think

August 03, 2021

1 Q. And what did you mean by that?

2 A. I knew that I was working for Microsoft and I had

3 to keep Microsoft happy. I was hoping that we could
4 resolve all of these individual issues and do all the
5 things in the previous five paragraphs and if that --
6 basically if that came through then I would have no
7 confusion.

8 Q. In 2005 you were a Microsoft employee with
9 supervisory authority of what music was included in
10 video games?

11 A. Yes.

12 Q. And you were also an owner of a company that
13 provided music for inclusion in games?

14 A. Yes.

15 Q. And you stood to receive a writer's royalty from
16 the public performance of the compositions you chose to
17 have Microsoft use and what you worked on?

18 A. Yes.

19 Q. And did you see a conflict in that?

20 A. I asked about it and I certainly starting all the
21 way back in 2001 when I knew we were still under a
22 license agreement. I said, look, I'm an employee, but I
23 have another company that is licensing music. I'm an
24 ASCAP composer and I'm the signator for all of your
25 actors, my company was the union signator.

August 03, 2021

1 And I said to the powers that be at the time, I
2 have a feeling that this could be a conflict of interest
3 down the road. I think we need to fix this up. So I
4 was always under the impression that it might have been
5 a conflict of interest, but like as long as Microsoft
6 still paid my salary and still paid O'Donnell/Salvatori,
7 I just felt like, well, apparently they're okay with
8 this.

9 I just felt like we needed to clarify it. I
10 would have been happy to make it very, very clear. It
11 just seemed like we were in trouble with it.

12 When you say conflict of interest I think that's
13 an interesting way of putting it. It's like a conflict
14 of interest not on my part. I -- I just want to make
15 the best game possibly, but from a business standpoint I
16 can see and I saw even at the time that it's possible
17 there would have been people at Microsoft that didn't
18 want that to continue.

19 Q. When you said that at the beginning, are you
20 referring to the meeting you had with two or three
21 Microsoft people after you had put the handwritten
22 notations in the employment agreement?

23 A. A little bit there, not so much that that was a
24 conflict of interest. Although since you asked this,
25 one of the questions that was asked of me at that

August 03, 2021

1 meeting was, what will be your role at -- at Bungie
2 inside Microsoft. And I said, I'll be the audio
3 director and I'll be making the decision on music.

4 And they said, will any of the music that you're
5 withholding here, will any of that music be used in the
6 game. And I said to them at that time, I don't know.

7 And I wasn't being cute, I really didn't know yet. I

8 didn't know if any of that music would be used in the

9 game because we hadn't really started working on the

10 final -- the game itself. We were only doing

11 promotional stuff. I was hoping we would use it in the

12 game.

13 And, frankly, I was the one who made the decision

14 on whether it would be used in the game. Although there

15 was a creative director at Bungie named Jason Jones who

16 was over me and he could have at any -- at any moment

17 said, Marty, I don't like any of that music, let's start

18 over from scratch. But we didn't, we used all that Halo

19 music so.

20 Does that answer your question? Sorry.

21 MR. ANDERSON: Okay. I'm going to ask that

22 the court reporter mark as Exhibit 5 a document produced

23 by ODS bearing the control number 003165.

24 (Exhibit 5, remotely introduced and provided

25 electronically to the reporter.)

August 03, 2021

1 BY MR. ANDERSON:

2 Q. And, sir, if you could please let me know when
3 you have it open.

4 A. I have it open.

5 Q. Are these -- well, first of all, you see that
6 there -- at the top it states, according to my journal
7 sent July 24, 2 -- '05.

8 Do you see that?

9 A. I do.

10 Q. Is that something you wrote --

11 A. Yes.

12 Q. -- typed?

13 A. Yes.

14 Q. What journal are you referring to?

15 A. There was some sort of written journal that I
16 started keeping just about my days working on Halo. At
17 some point I feel like I started to transcribe it to
18 like a Word doc and that's what I remember. I -- I --
19 I've -- I've looked for that journal and I can't find
20 it.

21 But there are times when I have -- whatever
22 digital version I had I would -- I would sort of do
23 little short edits like this. So this probably came
24 from a conversation I had with Hubert that I kind of
25 cleaned up and put into this digital journal of mine.

August 03, 2021

1 So on Halo 2 there were some other people that
2 composed music for parts of the soundtrack, which was
3 the standalone stuff, but some of that didn't ever go
4 into the game. So some of that was not from the game.

5 Q. So --

6 A. Then of course we also had live orchestra players
7 and live singers and we recorded it at Studio X in
8 Seattle. So there were engineers involved and Steve Vai
9 came in and improvised a whole bunch of really cool
10 stuff and I put music in front of him and he did the
11 music I wrote and then he improvised stuff and that's
12 the way that goes.

13 When you improvise over music you don't get a --
14 you normally don't get a composer's credit unless it's
15 specifically talked about. He was a performer.

16 Q. Other than the people that you've identified was
17 there anyone involved in the preparation of the recorded
18 music that ODS delivered for Halo 2?

19 A. I've already talked about Stan LePard. I -- I
20 don't think so. I think I've identified everybody or
21 their roles at least.

22 Q. Okay. Other than the people you previously
23 identified, is there anyone who was involved in the
24 preparation of the recorded music that ODS delivered for
25 Halo 3?

August 03, 2021

1 A. Yeah, I mean -- yeah.

2 MR. ANDERSON: Okay. Next is Exhibit 24.

3 I'd ask that the court reporter mark as Exhibit 24 a
4 exchange of e-mails on December 8th, 2009 between
5 Mr. O'Donnell and Mr. Salvatori that was produced with
6 the control number ending in 2678.

7 (Exhibit 24, remotely introduced and provided
8 electronically to the reporter.)

9 BY MR. ANDERSON:

10 Q. Have you seen these e-mails before?

11 A. Yes.

12 Q. Do you recognize them as e-mails that you
13 exchanged with Mr. Salvatori in December of 2009?

14 A. Yes.

15 Q. The subject -- well, first of all, is the first
16 e-mail in the chain the one at the bottom from you to
17 Mr. Salvatori?

18 A. Yes.

19 Q. And the subject in that e-mail is ASCAP. By that
20 did you mean ASCAP public performance royalties?

21 A. I meant the organization ASCAP, association of
22 society or whatever it is. American Society of
23 Composers, Authors and Publishers.

24 Q. And you refer to the VGA -- I'm sorry, VGA
25 trailer music?

August 03, 2021

1 A. Right.

2 Q. What is the VGA trailer?

3 A. Video games awards, that's what it was, Video
4 Game Awards. So we were making a trailer that was going
5 to be at the Video Game Awards called Lone Wolf, which
6 was the first, I believe, the first time people saw
7 anything about Halo: Reach. So we had done music for
8 that. It was the first piece done for Halo: Reach and I
9 wanted to get ahead of, you know, the process and make
10 sure we could get it registered with ASCAP.

11 Q. Was the VGA trailer a advertisement or promotion
12 of the Video Game Awards or was it a -- a advertisement
13 or trailer for, I'm sorry, promotion of Halo: Reach?

14 A. It was -- it was a promotion of Halo: Reach.

15 Q. Okay. And when you say we produced that, was it
16 ODS or Microsoft that produced it?

17 A. Mike and I wrote the music and we produced it.
18 Bungie made the visual parts of the trailer. And we
19 were all doing this for Microsoft publishing for
20 Halo: Reach. So this was Bungie's product, it was
21 O'Donnell/Salvatori's music and it was for promoting
22 Halo: Reach for Microsoft.

23 Q. At this point in time was Bungie still a division
24 or part of Microsoft or had it become a separate and new
25 entity?

August 03, 2021

1 A. We were -- Bungie was a separate and new entity.
2 And I -- I'm sorry, but I don't remember what we were by
3 this point. We might have been -- I don't know if we
4 were Bungie, Inc., or Bungie, LLC. I don't remember
5 what entity we were exactly.

6 Q. Okay. You don't remember the name, but it was an
7 entity that you and others formed after you left
8 Microsoft?

9 A. Yeah. I -- starting in 2007, Jan -- July of 2007
10 we were independent -- an independent business from
11 Microsoft. And like I said before we went through
12 several different name changes. I was one of the
13 founders of the new company and also on the board of
14 directors.

15 Q. What was the Halo: Reach music, which Halo: Reach
16 music was in the VGA trail -- trailer?

17 A. Well, the one called Lone Wolf.

18 Q. Only Lone Wolf?

19 A. What'd you say?

20 Q. Only Lone Wolf?

21 A. That's what we called that piece, yes.

22 Q. I'm sorry. So let me -- let me just make it --
23 sure because maybe I -- I got confused.

24 But -- but is it correct that the only Halo:
25 Reach music that was in the VGA trailer was the recorded

August 03, 2021

1 composition Lone Wolf?

2 A. Yes.

3 Q. Okay. And --

4 A. That doesn't mean it was the only time it was
5 used. That's all it was at that moment in the trailer.

6 Q. Were there -- was the trailer actually used as it
7 was -- I'm sorry.

8 Was the trailer, the VGA trailer in the form
9 produced by Bungie actually used by Microsoft?

10 A. We did it for Microsoft.

11 Q. Yeah, I know. My question was whether it was
12 actually used by Microsoft.

13 A. Yeah, they -- they wanted us to show Reach at the
14 Video Game Awards.

15 Q. Right. But my question is a little -- twist in a
16 way that's actually -- the first of a two-part question.

17 A. Okay.

18 Q. The first -- the first part is, did Microsoft
19 actually use the VGA trailer that Bungie produced?

20 A. Yes.

21 Q. And, second, did they make any changes to it?

22 A. Not that I'm aware of, no.

23 Q. Okay. When -- in your e-mail at 1:11 p.m. on

24 December 8th, 2009, you referred to registering it with

25 ASCAP. You're referring to registering Lone Wolf with

August 03, 2021

1 ASCAP?

2 A. Yes.

3 Q. And you did that in order that you and

4 Mr. Salvatori would be credited as co-writers?

5 A. We wanted to get a jump on making sure we weren't

6 registering all the ASCAP music in arrears that we were

7 doing it while we were making it.

8 Q. Yeah. But my question -- and I apologize if I'm

9 not understanding the answer. But my question was you

10 wanted to register with ASCAP a claim of writer's -- to

11 the writer's share performance royalties on behalf of

12 you and Mr. Salvatori?

13 A. No, we wanted to do the normal thing you do with

14 a piece of music that we were writing that was for

15 Microsoft publishing. So we knew that Microsoft was

16 probably not going to register it because they didn't --

17 they never seemed to care.

18 So I just was like, Mike, let's just make sure we

19 register this now, you and I are the writers, Microsoft

20 is the publisher, get it in the -- get it in the books,

21 let's go. That's what it is. This was to -- this was

22 to do the right thing for the publisher and the writers

23 so it was done.

24 Q. Were all the Halo: Reach compositions that you

25 and Mr. Salvatori worked on had they been registered

August 03, 2021

1 with ASCAP?

2 A. They had -- yeah, they had been. Yes.

3 Q. And did you register -- you and Mr. Salvatori

4 register all of them or did Microsoft register some?

5 A. My memory is that we -- Mike and I registered all

6 of them. Most likely Mike.

7 Q. And -- excuse me -- the two minutes and 27

8 seconds that's the duration of Lone Wolf?

9 A. Yes.

10 Q. And you see above that that Mr. Salvatori

11 responded, done. Could you drop a copy in my folder?

12 A. Yeah.

13 Q. What folder was he referring to?

14 A. I don't know. Probably some shared folder on the

15 Internet.

16 Q. Did you have an understanding of what copy he was

17 talking about?

18 A. You know what, I really don't. But we shared

19 music files. So it's quite possible I had mixed a music

20 file that he didn't mix and he didn't have a copy yet so

21 I gave it to him.

22 Q. So --

23 A. I'm pretty sure it's a music file, a audio

24 recording, a stereo audio recording that we were doing.

25 Q. And so in December of 2009 you still had the

August 03, 2021

1 audio recording of the mix and completed Lone Wolf that
2 had been provided by ODS to Microsoft?

3 A. Yes.

4 Q. Where did you get that audio recording?

5 A. I made it.

6 Q. And by you made it, you mean when ODS was
7 rendering services to Microsoft?

8 A. Yeah.

9 Q. Are there any other recorded -- recordings that
10 you had in -- after you left -- that you retained after
11 you left Microsoft, any other Halo recordings?

12 A. Yeah, all of them.

13 Q. Did you also retain stem files?

14 A. We retained everything.

15 Q. Did anyone at Microsoft ever ask you to return
16 any of those recordings?

17 A. No. I mean --

18 Q. Did you ever --

19 A. -- they -- they had copies of the stems and they
20 had copies of the -- everything that -- everything we
21 were by contract according to the Bungie contracts with
22 Microsoft that we were supposed to turn over to
23 Microsoft were the -- everything that was in what they
24 called the depot.

25 So all the files that they needed in order to

August 03, 2021

1 make and re-create the games that we shipped. So all
2 the data files, all the audio files, all the -- all that
3 stuff.

4 Q. I'm not talking about what they have. I'm
5 talking about what you and Mr. Salvatori retained after
6 you -- after you left Microsoft. And did you ever tell
7 anyone at Microsoft that the recordings had been lost in
8 a fire?

9 A. We lost stuff in the fire back in 1999, January.
10 But none of the -- I don't remember ever saying anything
11 about files that Microsoft wanted that was lost in a
12 fire. I don't remember that at all.

13 Q. Were there any Halo, you know, like the Halo
14 demo, anything else or the demo game or demo game music
15 that was done before you became employed by Microsoft
16 that were lost in a fire in 1999?

17 A. That I don't remember. We had a fire. We lost a
18 lot of stuff including the very earliest thoughts that
19 we were doing with Halo. By the time we did the 1999
20 summer thing for Steve Jobs we were back in Mike's
21 basement and I think we still -- we retained all that
22 stuff.

23 Q. And just for clarity I take it the fire was not
24 in Mike's basement?

25 A. No.

August 03, 2021

1 music that was used in Halo: Reach?

2 A. Yes. I believe, once again, Stan LePard,
3 C Paul Johnson, I think another composer named
4 Skye Lewin, S-k-y-e. Lewin, L-e-w-i-n. I believe he
5 started contributing a little something. There might
6 have been one other guy that I can't remember as
7 composers that collaborated on a couple pieces.

8 And then of course we still had Stan as
9 orchestrator, we had Studio X and the engineers at
10 Studio X. And the professional musicians. I think even
11 some of it might have been recorded at Bastyr University
12 Chapel. So anyway, that's everybody I could think of
13 right now. I'd have to look at the credits to tell you
14 for sure.

15 Q. And, I'm sorry, that was Bastyr?

16 A. Yeah, Bastyr University. B-a-s-t-y-r, Bastyr
17 University Chapel. I think. You know, it's weird I'm
18 not sure if I did record there or not, but whatever.

19 MR. ANDERSON: Bear with me for a second.

20 Okay. I'm going to ask that the court
21 reporter mark as Exhibit 25 a two-page document that ODS
22 produced with the control numbers 1751.

23 (Exhibit 25, remotely introduced and provided
24 electronically to the reporter.)

25 ///

August 03, 2021

1 BY MR. ANDERSON:

2 Q. Do you recognize this -- well, first of all, the
3 first page appears to be an e-mail that you sent to
4 Mr. Salvatori on February 8th, 2010.

5 Do you recall sending this e-mail?

6 A. Vaguely. Yes.

7 Q. And the -- it looks like there's an attachment
8 Halo Legends ost.pdf.

9 Do you see that?

10 A. Yeah.

11 Q. Is the second page of this exhibit the PDF that
12 you sent to Mr. Sal -- Salvatori in February of 2010?

13 A. Yeah.

14 Q. The top part of the second page has handwritten
15 numbers. The bottom part -- what is the bottom part of
16 the second page?

17 A. That is -- well, if you turn it sideways, that
18 bottom part is a copy of the CD insert title page and
19 the insert that lists all the tracks.

20 Q. And the handwritten portion, again, you're right,
21 you have to turn it to the side, and then the -- the top
22 part if it's turned to the side are handwritten numbers
23 and the word total and OD, SAC, time and songs.

24 Are these calculations that you did?

25 A. Yes.

August 03, 2021

1 Q. What was the purpose of the calculations?

2 A. They had -- if you look over at the printed part
3 they had said like it says tracks one, two, three, four,
4 five (descriptive sound) includes songs and instrumental
5 music based on the soundtracks from Halo: Combat Evolved
6 and Halo 2, which we composed and performed by
7 Martin O'Donnell and Michael Salvatori.

8 So this is me looking at the total amount of
9 minutes on this soundtrack that were composed and
10 performed by Martin O'Donnell and Michael Salvatori.
11 And then I compared it to the total amount of total
12 music on the entire thing.

13 Q. Bear with me for a second. But -- and I could be
14 confusing these. But isn't Halo Legends -- which one --
15 which product is Halo Legends?

16 A. This is the one I said I might forget. What it
17 was I believe this was the thing I talked about before
18 which was a TV series that was animated based in the
19 Halo universe with, you know, animation and actors and
20 stories that were different than Halo.

21 Q. And I believe you also testified that you and
22 Mr. Salvatori were properly credited -- credited with
23 ASCAP, correct?

24 A. Yeah, I -- I think I must have been -- we didn't
25 get credit. This actually brings back my memory a

August 03, 2021

1 little bit. It looks like we didn't get credited for
2 ASCAP until I did this calculation. What I remember is
3 that we were credited on the soundtrack itself right
4 there on that second page.

5 It says, it credits Marty O'Don --

6 Martin O'Donnell and Michael Salvatori and I guess what
7 happened was I looked at it and saw that it hadn't been
8 registered with ASCAP. So I went ahead and did it. I
9 told Mike to do it or asked Mike to do it.

10 Q. Okay. And I believe you testified, and -- and I
11 could be wrong, but I believe you testified that the
12 Halo Legends uses of the compositions were all
13 re-records; is that correct?

14 A. Yes, just like they said here. It's based on the
15 soundtracks from Halo: Combat Evolved and Halo 2 which
16 were composed, performed by Martin O'Donnell,
17 Michael Salvatori.

18 Q. Yeah, it's the performed that's throwing me.
19 Because your performances did not appear in the Halo
20 Legends soundtrack, correct?

21 A. I'll have -- I would have to listen to it again.
22 I think they re-recorded my -- our performances. I
23 think they re-recorded them.

24 Q. Okay. But the end result is that one way or the
25 other by 2010 all of the 21 tracks on this were

August 03, 2021

1 melody. You're talking about an arranged -- a new
2 arrangement of Walk in the Woods?

3 A. Yes, in this particular case if -- if you want to
4 start defining and I have a feeling we're going to need
5 to get expert witnesses in to define, but you're just
6 talking to me.

7 So there is the original recording and the
8 underlying music and then you could make versions of
9 that underlying music by recording something slightly
10 new and different and you can extend it and you can make
11 it smaller. You can quote pieces from an original piece
12 and make a new piece, but you quote some melodies and
13 that might not be called an arrangement, that might be
14 called something that's derivative or even just a quote.

15 And then there are arrangements which are
16 essentially very close to the same like Try With a
17 Little Help From My Friends by Joe Cocker is an
18 arrangement of Lennon/McCartney song but very, very
19 different from beginning to end. So there are
20 arrangements, there are derivatives, there are quotes.

21 The biggest issue for -- for a musician is the
22 fact that whatever this, quote/unquote, new piece is, it
23 wouldn't exist if it wasn't for the original piece and
24 that's the key. It's not accidentally similar. It's
25 purposely derived either as an arrangement or as a quote

August 03, 2021

1 at Microsoft is owned by Microsoft.

2 Q. Okay. Move to strike as nonresponsive.

3 Did you create the video that we're talking about
4 while you were an employee of Microsoft?

5 A. I created the video while I was an employee of
6 O'Donnell/Salvatori and an employee of Microsoft.

7 Q. Where was the video taken?

8 A. At Studio X in Seattle.

9 Q. Was that a studio that Microsoft rented for ODS's
10 use?

11 A. Possibly.

12 Q. And who actually did the -- the videotaping or
13 filming?

14 A. Jay Weinlein (phonetic).

15 Q. Who's Jay Weinlein?

16 A. He is a audio lead at -- at Bungie.

17 Q. Was he at Microsoft -- a Microsoft employee at
18 the time?

19 A. Yes.

20 Q. Other than the studio and Mr. -- whatever that
21 gentleman's name was, his services and your services as
22 an employee, were there any other Microsoft employees
23 who were involved in the production, preparation,
24 creation, whatever you want to use of this video?

25 A. No, no other employees.

EXHIBIT 2

(According to my journal sent 7/24/05)

Hubert,

I believe that my salary and compensation pays for my performance as Audio Director at Bungie. One part of my duties is to provide music for our games. I've had a 20-year collaboration with Mike Salvatori composing and producing original music. For Halo 2 my compensation plus the payment to Salvatori covered all uses of our music in Halo 2 and advertising for Halo 2. We have no other expectation for further compensation other than performance income, which is paid directly by ASCAP.

I also believe that we are entitled to further compensation as composers for uses of our underlying compositions outside the game, and as performers/producers for the uses of the master recordings outside the game. This would include a share of the following:

- use in soundtrack cds, movies and TV
- stage productions
- sheet music
- digital downloads like iTunes and MS Music
- any other income derived from the use of the compositions or masters

For Halo 1 our agreement for the soundtrack was simpler but was done in the spirit of matching the expected royalty of approximately [REDACTED] per cd. For the Halo 2 soundtrack(s) we're expecting the same. It would be better to formalize the contract to more closely resemble a standard music publishing agreement in order to cover all ancillary use and a future working relationship.

Hubert,

I believe that my salary and compensation pays for my performance as Audio Director at Bungie. One part of my duties is to provide music for our games. I've had a 20-year collaboration with Mike Salvatori composing and producing original music. For Halo 2 my compensation plus the payment to Salvatori covered all uses of our music in Halo 2 and advertising for Halo 2. We have no expectation for further compensation other than performance income, which is paid directly by ASCAP to both Mike and me as composers, and to Microsoft as the copyright owner.

I also believe that we are entitled to further compensation as composers for uses of our underlying compositions outside the game (the "writer's share of licensing income), and as performers/producers/ conductors for the uses of the master recordings of the compositions outside the game (just like any recording artist and producer would receive).

This would include a share of the following:

- use in any movie, television show, etc.
- use in soundtrack cds for the game, and future soundtrack cds for any movie or television show
- stage productions
- sheet music
- digital downloads like iTunes and MS Music
- advertising on television, radio or internet, movie theaters, etc. for anything other than the game - for example, if there is a Halo movie and it uses our music in ads
- any other income derived from the use of the compositions or masters except in the game or advertising for the game

For Halo 1 our agreement for the soundtrack was simpler, but was done in the spirit of matching the expected royalty of approximately [REDACTED] per cd. For the Halo 2 soundtrack(s) we're expecting the same. It would be better to formalize the contract to more closely resemble a standard music publishing agreement, with an extra royalty section covering income from use of the master recordings, in order to cover all ancillary use and a future working relationship.

Marty O'Donnell

EXHIBIT 3

ORIGINAL

Deal Point No.: 196018**CONFIRMATORY WORK-MADE-FOR-HIRE AND BACKUP ASSIGNMENT AGREEMENT**

This Confirmatory Work-Made-For-Hire and Backup Assignment Agreement ("Agreement") is made as of this December 14th, 2005 by and among O'Donnell/Salvatori, Inc., a corporation organized under the laws of the State of Illinois with offices located at 4 Ellyn Court, Glen Ellyn, IL 60137 ("Assignor"), Martin O'Donnell and Michael Salvatori (jointly and severally, "Writers"), and Microsoft Corporation, a corporation organized under the laws of the State of Washington with offices located at One Microsoft Way, Redmond, WA 98052 ("Assignee").

For valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

WHEREAS, Assignor and Assignee have previously entered into an Independent Contractor Agreement dated August 28, 2002 (such agreement, as amended, including the First Amendment and the Second Amendment, is hereinafter referred to as the "ICA"), whereby Assignor agreed, accepted and acknowledged that the Soundtrack (as defined in the ICA) and all musical compositions, sound recordings, demos, outtakes, and derivative works of any and all of the foregoing, and all other materials and work product that have been, or may in the future be, produced by Assignor under the ICA, including without limitation in connection with the Game (as defined in the ICA), and all underlying elements and versions thereof, and all works of authorship of whatever kind and nature contained therein that are created in whole or in part by Assignor and/or Writers in connection therewith, including without limitation the musical compositions and corresponding sound recordings identified on the attached Schedule A (all of the foregoing, including without limitation the Soundtrack, are collectively referred to hereinafter as the "WORK") shall be deemed a work made for hire, and, to the extent that the WORK (or any portion thereof) for any reason does not qualify as a work made for hire under applicable law, then Assignor assigned all of its rights, titles, interests and ownership in and to the WORK to Assignee;

WHEREAS, Assignor and Assignee hereby desire to confirm and clarify their original intent that the WORK is and shall be deemed a work made for hire by Assignor for Assignee, and, to the extent that the WORK does not qualify as a work made for hire under applicable law, then the WORK is and shall be deemed to have been assigned to Assignee by Assignor pursuant to the terms of the ICA, as confirmed herein below; and

WHEREAS, the parties to this Agreement, in order to avoid any confusion or ambiguity that may exist, wish to confirm that the ICA, together with this Agreement, supersedes and replaces any and all other agreements between Assignor, the Writers and/or any of their affiliates or predecessors in interest, on the one hand, and Assignee and/or any of its affiliates or predecessors in interest, on the other, which other agreements shall hereafter be deemed null and void;

THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Without limiting the generality of the provisions of the ICA, and notwithstanding anything to the contrary contained in any agreement between Assignor, the Writers and/or any of their predecessors in interest, on the one hand, and Assignee and/or any of its predecessors in interest, on the other, Assignor, the Writers and Assignee hereby confirm their original intent that the WORK shall be deemed a "work made for hire" (within the meaning of the United States Copyright Act, as amended, 17 U.S.C. §§ 101, *et seq.*) for Assignee. Assignor and the Writers agree that Assignee shall be deemed for all purposes to be the author of the WORK from the moment of creation and shall own all rights, title and interests therein (including, without limitation, all copyrights and all renewals and extensions thereof) and the exclusive right, throughout the universe in perpetuity, to distribute, perform, exhibit and otherwise use and exploit

any and all such rights in any and all media and by any and all methods now known or hereafter devised. Without limiting the generality of the foregoing, Assignor and the Writers agree that Assignee shall own and be exclusively entitled to all works based upon, derived from, or incorporating the WORK, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights in and to the WORK, and in and to all rights corresponding to the foregoing throughout the universe. If the WORK or any portion thereof does not qualify as a work made for hire for Assignee under applicable law, then Assignor and the Writers hereby confirm that they have irrevocably transferred and assigned to Assignee, and confirm that they further agree to transfer and assign to Assignee, throughout the universe and in perpetuity, all of their rights, title and interests in and to the WORK, or the applicable portion thereof, and Assignor and the Writers confirm their acknowledgement and agreement that they shall hold no right, title, or interest whatsoever in or to the WORK. To the fullest extent allowable under any and all applicable laws, Assignor and the Writers hereby irrevocably waive or assign to Assignee Assignor's so-called "moral rights" or "droit moral." Assignor and the Writers acknowledge and agree that any and all transfers, assignments and grants of rights made hereunder are made without reservation, condition or limitation, that the rights granted herein include, without limitation, so-called rental and lending rights. Without limiting the generality of the foregoing provisions of this paragraph, Assignor warrants and represents that each and every person or entity engaged by or on behalf of Assignor to contribute to the WORK has been or shall be either (i) a bona fide employee of Assignor working within the scope of his or her employment or (ii) an independent contractor that has signed a legally binding work-for-hire and backup assignment agreement transferring all of such person's or entity's rights to Assignor, such that Assignor is fully entitled to transfer and convey to Assignee all of the rights specified in the foregoing provisions of this paragraph.

2. Assignee, Assignor and Writers further confirm and agree that any and all royalties, payments and compensation due to Assignor and/or Writers shall be solely as set forth in the ICA and, without limiting the generality of the foregoing, except as may otherwise be subsequently agreed to in writing by the parties, no additional royalties, payments or compensation will be due and payable to Assignor and/or Writers for WORK associated with or related to the Game. Nothing herein is intended to limit any further compensation as may be subsequently agreed upon by the parties in writing.

3. This Agreement is in no way intended to limit or interfere with any of the rights to which Assignee is entitled under U.S. Copyright law (including without limitation the "work-made-for-hire" doctrine) with respect to the services of any bona fide employee.

In witness whereof, the parties have executed this Agreement, effective this 14th day of December, 2005.

O'Donnell/Salvatori, Inc.

By: MICHAEL SALVATORI

Title: VICE PRESIDENT

Microsoft Corporation

By: [Signature]

Title: STUDIO LEAD

[Signature]
Martin O'Donnell, an individual

[Signature]
Michael Salvatori, an individual

MICROSOFT CONFIDENTIAL

Page 2 of 4

Schedule A

I. Halo Works

Opening Suite
Truth And Reconciliation Suite
Brothers In Arms
Enough Dead Heroes
Perilous Journey
A Walk In The Woods
Ambient Wonder
The Gun Pointed At The Head Of The Universe
Trace Amounts
Under Cover Of Night
What Once Was Lost
Lament For Pvt. Jenkins
Devils... Monsters...
Covenant Dance
Alien Corridors
Rock Anthem For Saving The World
The Maw
Drumrun
On A Pale Horse
Perchance To Dream
Library Suite
The Long Run
Suite Autumn
Shadows
Dust And Echoes
Halo

II. Halo 2 Works

Halo Theme Mjolnir Mix
Peril
Ghosts or Reach
Heretic, Hero
Flawed Legacy
Impend
Ancient Machine
In Amber Clad
The Last Spartan
Orbit of Glass
Heavy Price Paid
Earth City
High Charity
Remembrance
Groove 1
Dream
Menace
Bad Dream
Bomay
Afro Perc
Mil Perc
Lo Pulse
Pulse Jig

MICROSOFT CONFIDENTIAL

Page 3 of 4

ODS 000429

Hope
Drums
Groove 3
Dirge
Rhythm Shad
Backrhodes
Borealis
Flashback
Helium Queen
Ionizer
Spook 1
Spook 2
Spook 3
Spook 4
Spook 5
Confused
Glue
Hi moans
Lo moans
More Strings
New Chant
Sad Strings
Driven
Stingers
Underwater
Women Choir
Battle End
Heat
Sad Fanfare
Sad Vox Strings
Slow Heat
Slow String Thing

EXHIBIT 4

August 04, 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois
Corporation,

Plaintiff,

vs.

Case No. 2:20-cv-00882-MLP

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

CONFIDENTIAL VIDEOCONFERENCE DEPOSITION

OF MICHAEL SALVATORI

WEDNESDAY, AUGUST 4, 2021

9:00 a.m.

August 04, 2021

1 BE IT REMEMBERED THAT, the videoconference deposition
2 of MICHAEL SALVATORI was reported by Mary C. Soldati,
3 Registered Professional Reporter and Certified Shorthand
4 Reporter, on Wednesday, August 4, 2021, commencing at
5 the hour of 9:00 a.m., the proceedings being reported
6 remotely from Portland, Oregon.

August 04, 2021

APPEARANCES

Appearing on behalf of the Plaintiff:

MARK L. LORBIECKI

GABRIELLE LINDQUIST

WILLIAMS, KASTNER & GIBBS PLLC

601 Union Street, Suite 4100

Seattle, WA 98101-2380

Mlorbiecki@williamskastner.com

Glindquist@williamskastner.com

(via videoconference)

Appearing on behalf of the Defendant:

PETER J. ANDERSON

DAVIS WRIGHT TREMAINE, LLP

865 South Figueroa Street

Suite 2400

Los Angeles, CA 90017-2566

Peteranderson@dwt.com

(via videoconference)

ALSO PRESENT: Lindsey Lewis, Videographer

1 to teach how to use multi-track recorders.

2 Q. Did they provide any degree?

3 A. Actually, they did. I did get
4 a -- well, I don't know if it was a
5 degree. It was a certificate.

6 Q. Okay.

7 A. And I'm sure I've long lost
8 that. That was in 1974.

9 Q. Okay. Are you a member of any
10 professional associations?

11 A. Excuse me? Did you say were
12 or are?

13 Q. I'm sorry. Are you a member of
14 any professional associations?

15 A. Yes. ASCAP.

16 Q. Any other associations besides
17 that?

18 A. No, none that I can think of.

19 Q. My apologies. I'm sorry.

20 A. It's okay.

21 Q. Are you a member of any unions?

22 A. Well, yes, Screen Actors Guild
23 and American Federation of Musicians.

24 Q. Have you ever held office in
25 either of those unions?

August 04, 2021

1 Q. Just for clarity, what do you
2 mean by "compiling the sound track"?

3 A. Well, when a game is released,
4 and we put together a soundtrack for sale,
5 you know, like a CD kind of thing, you
6 have to have it to music. You have to mix
7 it, remaster it, name the songs, order the
8 songs, those types of things.

9 Q. Okay. As far as you know, who
10 else was involved in the creation of the music
11 for the game, Halo: Combat Evolved?

12 A. Marty O'Donnell.

13 Q. Anyone else?

14 A. Not that I recall.

15 Q. Were there any music editors,
16 engineers, supervisors or anyone else involved
17 in the creation of that music, other than you
18 and Mr. O'Donnell?

19 A. Well, I think Marty was the
20 music supervisor on that.

21 Q. I'm trying to set aside you and
22 Mr. O'Donnell. I'm just asking whether there
23 was anyone else involved, and just as
24 examples, a, you know, music editor, engineer,
25 mixer, someone who masters, any of that?

August 04, 2021

1 A. Well, yes. We had and we did
2 live recordings on that a place called
3 Studio X in Seattle and Reed Ruddy was the
4 main engineer, and I believe the mastering
5 engineer was -- I can't think of his name
6 now. We still use him to this day. I'm
7 going to have to come back to you with
8 that. I just don't recall at the moment.

9 Q. Okay. If you do recall, please
10 let me know.

11 (Discussion off the record.)

12 BY MR. ANDERSON:

13 Q. To your knowledge, did
14 Microsoft -- any representative of Microsoft,
15 other than Mr. O'Donnell, request any changes
16 to the music that ODS delivered for Halo:
17 Combat Evolved?

18 A. I'm not aware of any.

19 Q. What form was the music in when
20 it was delivered to Microsoft -- and,
21 actually, let me rephrase that so it's clear.

22 Did ODS deliver a rough mix of
23 the music to Microsoft with respect to Halo:
24 Combat Evolved?

25 A. Well, when you say "delivered

August 04, 2021

1 to Microsoft," I don't understand that.

2 Because Marty was working at Microsoft, so

3 I delivered the music to him that I wrote.

4 As far as the music he wrote, I don't know
5 how he delivered.

6 Q. Okay. At the time that the music
7 was completed for -- completed by ODS for the
8 game, Halo: Combat Evolved, what elements:
9 stems, mixes, et cetera, did ODS have?

10 A. Well, generally, I would say
11 we -- we deliver mixes and stems, the
12 individual tracks, as we see fit, you
13 know. I would always deliver to Marty, I
14 would deliver him stems and a full mix.

15 Q. Okay. I'm asking a different
16 question because you said you weren't involved
17 in the actual delivery of the materials. I'm
18 asking what existed.

19 A. I didn't say I wasn't involved
20 in delivery. I did deliver materials to
21 Marty, who was working for Microsoft.

22 MR. ANDERSON: Move to strike as
23 non-responsive to the question.

24 BY MR. ANDERSON:

25 Q. My question to you, sir -- and I

August 04, 2021

1 Q. When you say "pieces," are you
2 referring to separate tracks?

3 A. Separate pieces of music,
4 correct.

5 Q. Are you able to identify the ones
6 that you worked on?

7 A. I don't remember.

8 Q. Okay.

9 A. We worked together on a lot of
10 stuff. So some started as ideas in my
11 head, some started as ideas in his head.
12 I don't recall.

13 Q. Was ODS involved in the creation
14 of music for the game, Halo 2?

15 A. Yes, we were.

16 Q. Did you have any role in ODS's
17 creation of music for that game?

18 A. Yes, I did, similar to my role
19 from Combat Evolved.

20 Q. Okay. But I'm going to ask you
21 specifically, what was your role in the
22 creation of music for -- ODS's creation of
23 music for Halo 2?

24 A. I composed music for the game.
25 I recorded it, mixed it, delivered it,

1 strike that.

2 No. I've never personally had
3 a contract with a music publisher,
4 correct.

5 Q. Before -- have you ever been
6 associated with any performing rights
7 organization other than ASCAP?

8 A. Yes, I have.

9 Q. What other professional rights
10 organizations?

11 A. I was a member of BMI for a
12 period of time.

13 Q. When did you first become a
14 member of the BMI?

15 A. 1982.

16 Q. And at some point -- well, when
17 did you stop being associated with BMI?

18 A. I think I -- thinking -- about
19 the same time I switched to ASCAP.

20 Q. You -- you, unfortunately, cut
21 out for a second. You said "at some point."

22 A. About the same time I switched
23 to ASCAP.

24 Q. Why did you switch from BMI to
25 ASCAP?

August 04, 2021

1 A. Because BMI didn't pay out on
2 TV commercials as well as ASCAP did.

3 Q. Have you ever been affiliated or
4 associated with any performing rights
5 association other than BMI or ASCAP?

6 A. No.

7 Q. Have you ever personally received
8 a publisher's share of performance royalties
9 from any performing rights organization?

10 A. Personally, no.

11 Q. So all of these songs registered
12 with BMI and ASCAP identify you as a writer;
13 is that correct?

14 A. Yes. There are some that we
15 register that -- where O'Donnell/Salvatori
16 was the publisher. Some early works we
17 did for Bungie.

18 Q. So ODS was entitled to the
19 publisher share?

20 A. Correct.

21 Q. Is ODS a music publishing
22 company?

23 A. Yes.

24 Q. What songs does it administer or
25 control?

August 04, 2021

1 A. Well, Lone Wolf was compiled
2 out of music we had written for the game,
3 Halo: Reach, yes. I edited some bits
4 together that we had written for the game
5 and we used them on the trailer, correct.

6 Q. Okay. And just to follow-up on
7 that to make sure I'm clear.

8 A. Sure.

9 Q. Are you telling me Lone Wolf is
10 comprised of separate bits of music that were
11 delivered by ODS to Microsoft for Halo: Reach?

12 A. Yes.

13 Q. Does each of those constituent
14 pieces of music come from a different titled
15 track?

16 A. I'm going to say probably.
17 And it was mostly music that I had
18 written. And I'm the one that produced
19 the trailer because Marty was on vacation
20 at that time. I remember that, so.

21 I'm probably giving you too
22 much information here, but I don't
23 remember which specific pieces it was
24 taken from. I don't recall.

25 Q. Okay. In that original -- the

August 04, 2021

1 first email, the one at the bottom of the

2 exhibit, it goes on to state:

3 "Register it with ASCAP."

4 Do you see that?

5 A. Yes.

6 Q. Was Lone Wolf registered with

7 ASCAP?

8 A. Yeah, it was because it was a

9 separate arrangement of the pieces. There

10 was no piece in Halo: Reach called Lone

11 Wolf. So, yes, that was registered. I'm

12 99.9 percent sure that I registered it.

13 Q. Who registered it with ASCAP?

14 Was it you or Mr. O'Donnell or --

15 A. Usually me.

16 Q. Okay. So you registered both

17 Lone Wolf as an arrangement of two or more

18 prior compositions that were also registered?

19 A. Yes.

20 Q. And each of those registrations

21 identifies you and Mr. O'Donnell as a writer?

22 A. Correct.

23 Q. If you look at the reply just

24 above that, it looks like you replied:

25 "Done. Could you drop a copy in

EXHIBIT 5

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
SR 688-310

**Effective date of
registration:**

August 4, 2006

Title

Title of Work: Halo 2 original soundtrack

Completion/Publication

Year of Completion: 2006

Date of 1st Publication: April 25, 2006

Nation of 1st Publication: United States

Author

Author: Microsoft Corporation

Author Created: music, arrangement, performance, sound production, artwork

Work made for hire: Yes

Anonymous: No

Pseudonymous: No

Copyright claimant

Copyright Claimant: Microsoft Corporation

One Microsoft Way, Redmond, WA 98052

Certification

Name: Dave Green

Date: October 18, 2011

EXHIBIT 6

To: Marty O'Donnell[martytheelder@gmail.com]
From: Marty O'Donnell
Sent: Mon 10/6/2014 5:55:20 PM
Subject: Wfh2

Works Made for Hire

There is an important exception to the principle that you own all the copyright rights in a work you create. If you are an employee, and what you create is done as a part of your employment, then your employer, not you, owns all the rights. That is a consequence of the "works made for hire" doctrine in copyright law. (For a definition, see the statute.) But it is also important not to exaggerate this point, and to understand that anything that you do independently of your job remains yours.

For example, if you draft a company newsletter as part of your job, your company, not you, owns the rights in what you write for the newsletter. On the other hand, if you've written a novel or a computer application in your spare time, and that isn't your job, you, not your employer, own those rights. That's important to remember for the many creators who also have day jobs.

Even when you create works as part of your job, it may be possible for you to negotiate to obtain some rights back from your employer.

Other Work-for-Hire Issues

Unfortunately, its not just employees who need to look out for the work-for-hire doctrine. Some freelance creators, particularly journalists, photographers and screenwriters, may also be affected. Some (but NOT all) commissioned works will be works made for hire under the following circumstances:

The commissioned work falls into one of the nine categories listed in the copyright statute. Of these, two of the most significant are contributions to a collective work (such as a magazine, newspaper, anthology, or encyclopedia) and works ordered as part of an audiovisual work (such as a contribution to a motion picture or videogame).

If the commissioned work does not fall into one of these categories, it is NOT a work for hire, no matter what your contract says, and you still start out with all the rights. (Unfortunately, some contracts contain clauses broadly asserting that the work is for hire, even when there is little or no basis for that characterization.)

Even if the commissioned work does come within one of the categories, it is not a work for hire unless:

There is a written agreement explicitly saying the commissioned work is for hire, and

Both the creator and the person ordering or commissioning the work sign the agreement.

If there is no signed written agreement, then the work isn't for hire, and you start out with all the rights. If there is a written agreement, it should be entered into before you create the work. Beware of after-the-fact attempts to take away your rights by calling the work "for hire," for example by sending you a check whose endorsement line says that your signature is your agreement that the work was for hire.

From wiki:

The actual creator may or may not be publicly credited for the work, and this credit does not affect its legal status. States that are party to the Berne Convention for the Protection of Literary and Artistic Works recognize separately copyrights and moral rights, with moral rights including the right of the actual creators to publicly identify themselves as such, and to maintain the integrity of their work.[citation needed]

For example, Microsoft hired many programmers to develop the Windows operating system, which is credited simply to Microsoft Corporation. By contrast, Adobe Systems lists many of the developers of Photoshop in its credits. In both cases, the software is the property of the employing company. In both cases, the actual creators have moral rights. Similarly, newspapers routinely credit news articles written by their staff, and publishers credit the writers and illustrators who produce comic books featuring characters such as Batman or Spider-Man, but the publishers hold copyrights to the work. However, articles published in academic journals, or work produced by freelancers for magazines, are not generally works

created as a work for hire, which is why it is common for the publisher to require the copyright owner, the author, to sign a copyright transfer, a short legal document transferring specific author copyrights to the publisher. In this case the authors retain those copyrights in their work not granted to the publisher.

Reason:

When forced to rely on an implied license, a hiring party often finds that it has only limited rights to alter, update, or transform the work for which it paid. For example, a motion picture feature may hire dozens of creators of copyrightable works (e.g. music scores, scripts, sets, sound effects), any one of which could limit use of the entire film by denying permission to copy their contribution; the producers avoid this scenario by requiring that all contributions by non-employees fulfill the work-for-hire requirements.

Marty O'Donnell
Composer/Audio Director
425.417.4802

EXHIBIT 7

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF WASHINGTON

3 -----
4 O'DONNELL/SALVATORI, INC.,

5 Plaintiff,

6 vs.

Civil Action No. 2:20-cv-00882-MLP

7 MICROSOFT CORPORATION,

8 Defendant.
9 -----

10
11
12
13 The videotaped deposition of JIM CHARNE
14 was taken at the instance of the Defendant, pursuant to
15 the Federal Rules of Civil Procedure, taken via Zoom
16 video conferencing, on the 23rd day of September, 2021,
17 commencing at 9:02 a.m., before BETH ZIMMERMANN,
18 Registered Professional Reporter and Notary Public in and
19 for the State of Wisconsin.
20
21
22
23
24
25

1 REMOTE APPEARANCES

2

3 FOR THE PLAINTIFF:

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8

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19

20

21

22

23

24

25



1 music in other areas beyond that record album.

2 For example, if the music would be
3 licensed to appear in a motion picture or a
4 television show, that the composer and the
5 recording artist would receive a portion of
6 the revenue from that use beyond the initial
7 format or use that the music was prepared for.

8 Q And so is it your belief that composers and
9 performers of music who worked in the video
10 game industry were disadvantaged compared to
11 their counterparts who were composing or
12 performing music in the recorded music
13 industry in terms of their compensation?

14 MR. FOX: Counsel, I'll let you ask
15 this question, but he's not appearing as
16 anybody's expert. He's appearing as a fact
17 witness. So I'm going to start to instruct
18 him not to answer expert witness type
19 questions in the future.

20 BY MS. LI:

21 Q Mr. Charne, you may answer.

22 A Could you please restate the question?

23 Q Sure. I'm asking if you believe that, at the
24 time that we're talking about, whether or not
25 composers and performers of music who worked



1 in the video game industry were disadvantaged
2 compared to their counterparts in the recorded
3 music industry?

4 A Well, my observation was that in the video
5 game industry game publishers were treating
6 music the same way they were treating artwork
7 or computer code, which is contracting for it
8 on like a work-made-for-hire basis and paying
9 one fee and then expecting that they would
10 retain all rights with no obligation to the
11 creators for any subsequent uses, and that's
12 something that I felt was unfair given the
13 historical nature of the treatment of music in
14 works, in composers and performers' rights.

15 So that was something that I was working
16 toward to help creators of music have what I
17 viewed as more equitable treatment for their
18 work and to become more consistent in the way
19 music was treated in other segments of the
20 entertainment industry.

21 Q In the next paragraph that we were just
22 looking at you write, "But music score in
23 games, even if performed by the composer, is
24 generally treated as work-for-hire and all
25 rights are forfeited. Except in rare



1 A Well, as a general statement, the copyright
2 owner is generally the one who registers the
3 composition listing the copyright owner and
4 the writers.

5 But in cases where the copyright owner
6 doesn't register the compositions, I've heard
7 of instances, although I don't have firsthand
8 knowledge, of the composers registering the
9 works.

10 Q And when you say in general the copyright
11 owner registers the works with the PROs, what
12 is that understanding based on?

13 A It's based on conversations with
14 representatives of the public -- of ASCAP and
15 BMI.

16 Q And are those copyright owners generally
17 copyright owners in the recorded music
18 industry?

19 A In the recorded music industry they're
20 referred to as --
21 (Clarification by Reporter)

22 A -- the music publisher.

23 Q Do you have any independent knowledge of any
24 video game companies registering music with
25 the PROs as a music publisher?



EXHIBIT 8

Marty O'Donnell

August 31, 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

O'DONNELL/SALVATORI, INC., an)	
Illinois corporation,)	
)	
Plaintiff,)	
)	No. 2:20-cv-00882-MLP
vs.)	
)	
MICROSOFT CORPORATION, a)	
Washington corporation,)	
)	
Defendant.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
30(b)(6) DEPOSITION OF MARTY O'DONNELL
APPEARING REMOTELY FROM
LAS VEGAS, NEVADA

CONDUCTED VIA VIDEOCONFERENCE
August 31, 2021
9:00 A.M.

Reported by:
Kristi K. Week, RPR
WA Certified Court Reporter # 21004996

Marty O'Donnell

August 31, 2021

1 R E M O T E A P P E A R A N C E S
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Xiangli@dwt.com

23 ALSO PRESENT:

24 Itzel Figueroa, videographer
25

1 there's no music yet. Okay. At two minutes, 33 seconds,
2 the -- what's known as the piano version of the Halo 3
3 Fanfare appears. Still watching.

4 So I would say at about four minutes, 45
5 seconds, it's beginning a -- what I would call an
6 arrangement of the choral version of the monk chant. At
7 4:56 it's starting the percussion of the bombastic Halo
8 theme. 5:16 it does the full cello Halo theme, bombastic
9 version, otherwise know as da-da-da-da. Okay. At 5:29
10 it's doing the opening to Halo 3, I believe a piece called
11 "Truth." No, no, Luck. Sorry, the piece is called
12 "Luck." Still listening; almost done. Okay. At 5:38 is
13 the -- what's known as sort of the Master Chief theme,
14 which is rising cellos. Okay. I think we're done.

15 Q. Okay. And is it -- do I understand correctly
16 that in each of these instances the trailer, the Discover
17 Hope trailer, has new arrangements of the music that ODS
18 delivered to Microsoft?

19 A. Certainly new recordings. Some of them -- the
20 entire piece itself, which is five and a half minutes
21 long, although it's not all music, so by the time music
22 starts, I would say that's a -- contains both quotes and
23 new arrangements. Quote being something that is almost
24 note-for-note the same.

25 Q. In melody?

1 A. In the melody. It could be melody, could be
2 rhythm, could be chord progression. I mean, it's -- it's
3 -- it's -- you know, at some point hopefully we'll get a
4 -- someone that everybody respects, as a music expert, to
5 define all that stuff.

6 Q. Okay.

7 A. I mean, I consider myself a music expert, but I
8 have a feeling I don't qualify of that for you guys. I
9 mean, there's probably a technical reason why I can't be
10 the expert witness; is that correct?

11 Q. Are you asking me or your lawyer?

12 A. I'm asking you.

13 Q. I'm not gonna tell you --

14 A. Oh, okay.

15 Q. I don't represent you, so I'm not going to give
16 you legal advice, with all respect.

17 A. Okay.

18 Q. So in your view -- well, strike that.

19 At paragraph 30 there's a -- another link.
20 Do you know what that's to?

21 A. Okay. Here we go. Good thing I didn't put more
22 links in. Well, it's a Combat Evolved Anniversary
23 trailer, except that it starts with an ad, so somebody is
24 monetizing this. An ad for, oh, for me, it's vocal suite
25 library. So it's an ad that's geared just for me. I'm

1 Q. Do you agree it would have been reasonable for
2 Microsoft to allow Showtime to use Halo music for no
3 license fee, just to promote the series and generate
4 writer's royalties?

5 A. Well, I don't understand what you mean by
6 "reasonable." I certainly would assume that it's sort of
7 like when -- I guess it's like gift in kind, like if you
8 give away something that you can -- you know, you can say,
9 "Hey, this is worth X number of dollars on my taxes." So
10 if you're doing like a -- if you're saying we're not going
11 to physically charge you something, but it still helps
12 promote our brand, there's some sort of value received by
13 Microsoft, so...

14 Q. Right. That's what I'm asking. Would that be a
15 -- within a company's business judgment?

16 A. Oh, I think the company has every right to decide
17 how they want to receive value. Whether it's, you know,
18 specific monetary value or some sort of barter or trade,
19 or just, you know, promotional value.

20 Q. Okay.

21 A. I think the company has the right to do that,
22 sure.

23 Q. Okay. Thank you.

24 Looking at page 7 of the complaint,
25 paragraph 34, which reads, "On information and belief,

1 writer's share -- or failed to register the composition,
2 excuse me.

3 A. Oh, I think that's in this list. It's -- it's in
4 there.

5 Q. Yeah. I -- I -- I did figure that out. And what
6 I'm going to try to do, you know, for the next portion of
7 the deposition, is figure out which of these are copacetic
8 and which of these are problematic. Okay?

9 A. Yeah. Okay.

10 Q. Now on the first group, Halo: Combat Evolved, if
11 I understand correctly, they -- as far as you and ODS are
12 concerned, are -- all are properly registered with ASCAP,
13 identifying you and Mr. Salvatori as the writers --

14 A. Yes.

15 Q. -- as of today?

16 A. Yes.

17 Q. Okay. And some of these, I believe you
18 indicated, were originally registered with ASCAP with ODS
19 as the publisher; is that correct?

20 A. Yes. Except that I don't think they had the
21 exact same titles. These titles came later. These titles
22 come from when we actually released the soundtrack, we
23 gave them titles, but they still represent the same music
24 underneath, so...

25 Q. Okay. Is it fair to say that -- that as far as

1 ODS is concerned, there is no issue as to the ASCAP
2 registrations for the 26 songs that are listed under Halo:
3 Combat Evolved on the first page of Exhibit 47?

4 A. So I don't want to make this confusing; I really
5 don't. But there's -- you are correct, there's no
6 question that all of these have been correctly registered
7 with ASCAP.

8 The difficulty comes when somebody, for
9 example, number 26, Halo, that's actually the original
10 Halo theme. When somebody takes that original Halo theme
11 and rearranges it in a new piece and calls it something
12 new and doesn't register with ASCAP, they don't account
13 for the fact that this is already a registered piece. And
14 that's -- this is just a record of things that are already
15 registered and what we expect should be respected down the
16 road. So that's why this is on the list.

17 But to answer your original question, we're
18 happy with these 26.

19 Q. Okay. That's a good way of putting it.

20 If I understand correctly, later in Exhibit
21 47 you identify musical compositions that incorporate
22 portions of, for example, number 26, Halo, and the
23 registration of those new musical compositions pose an
24 issue in this case, if I understand correctly?

25 A. Yes.

1 Q. No. I understand that, and I appreciate you
2 clarifying that.

3 A. Yeah.

4 Q. I'm going to ask basically the same things as to
5 the next group. Now we see a listing of 20 compositions
6 under the title Halo 2 OST Volume One and another -- there
7 are number 12, but looks like each one has subparts,
8 that's Halo 2 OST, Volume 2.

9 A. Yes.

10 Q. And my first question is, is it correct that all
11 of those have been registered with ASCAP showing
12 Mr. Salvatori and you as writers or co-writers? Stop
13 there.

14 A. Yes. I'd have to look at each individual one
15 because at some point, I don't remember if it was on Halo
16 2 Volume two or when, but at some point there might have
17 been some other composers that were included with us --

18 Q. Right. I remember that -- my apologies. I
19 remember that from the first deposition. That's why I
20 said that you and Mr. Salvatori were identified in the
21 registrations as writers or co-writers, and what I meant
22 was co-writers, possibly with another writer.

23 A. Yes, exactly.

24 Q. But all of these registrations are copacetic, and
25 ODS does not make a claim against Microsoft with respect

EXHIBIT 9

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois
corporation,

Plaintiff/Counterclaim
Defendant,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant/Counterclaim
Plaintiff.

NO. 2:20-cv-00882-MLP

**PLAINTIFF/COUNTERCLAIM
DEFENDANT
O'DONNELL/SALVATORI, INC.'S
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF MICROSOFT
CORPORATION'S FOURTH SET OF
REQUESTS FOR PRODUCTION**

TO: DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT CORPORATION;

AND TO: All Attorneys of Record.

Plaintiff/Counterclaim Defendant O'Donnell/Salvatori, Inc. ("ODS"), by and through its attorneys, responds to Defendant/Counterclaim Plaintiff Microsoft Corporation's ("Microsoft") Fourth Set of Requests for Production ("Discovery Requests") to ODS as follows:

\\

\\

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S ANSWERS AND RESPONSES
TO DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FOURTH SET OF REQUESTS FOR
PRODUCTION - 1
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

Defendant Microsoft Corporation submits its Fourth Set of Requests for Production of Documents (“Discovery Requests”) to Plaintiff O’Donnell/Salvatori, Inc. (“Plaintiff”).

I. INSTRUCTIONS

1. Federal Rules of Civil Procedure 26, 33, and 34 govern these Discovery Requests. In answering them, please furnish all information within your possession, custody, or control, i.e., including information obtained directly by you, your attorneys, agents, assigns, representatives, or anyone acting on your or their behalf. If you cannot answer these Requests in full, answer to the extent possible, specify the reasons for your inability to answer the remainder, and state whatever information or knowledge you have concerning the unanswered portion.

2. Please verify your answers on the form provided after the last request and serve a completed set of requests along with answers on Microsoft within 30 days after receipt of these requests. Service should be made to the office of Microsoft’s attorneys electronically, to ambikadoran@dwt.com, xiangli@dwt.com, and erickamitterndorfer@dwt.com. You may also serve hard copies at Davis Wright Tremaine LLP, 920 Fifth Avenue, Suite 3300 Seattle, Washington 98104-1610.

3. Please supplement your responses and production as required under Federal Rule of Civil Procedure 26.

II. DEFINITIONS

1. **You, Your, Plaintiff, ODS.** “You,” “Your,” “ODS,” and “Plaintiff” means O’Donnell/Salvatori, Inc. as well as any employees, agents, representatives, or persons acting on Your behalf.

2. **Complaint.** “Complaint” means the Complaint that You filed against Microsoft in King County Superior Court on or around March 10, 2020.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O’DONNELL/SALVATORI, INC.’S ANSWERS AND RESPONSES
TO DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION’S FOURTH SET OF REQUESTS FOR
PRODUCTION - 2
(2:20-cv-00882-MLP)

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601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

3. **ICA.** “ICA” means the “Independent Contractor Agreement” that Microsoft and Plaintiff entered on August 28, 2002, and includes the subsequent Amendments and Confirmatory Work-Made-For-Hire and Backup Assignment Agreement.

PRELIMINARY STATEMENT

Pursuant to Fed. R. Civ. P. and LCR 26, 33, 34, and 36 ODS submits the following Answers and Responses to Microsoft’s Fourth Set of Requests for Production (“Discovery Requests”) based upon information available at this time. The answers and responses provided are made in a good faith effort to supply as much factual information as is presently known. ODS will continue discovery and investigation—some of which has been requested, but not yet furnished—with respect to the subject matter of this litigation. ODS therefore respectfully reserves the right to rely upon, and/or present at trial or other hearing on this matter, any facts or documents that may be subsequently learned or obtained as a result of such ongoing discovery and investigation, or which may be adduced at trial. This may include supplementing or revising its responses, if necessary.

ODS objects to and declines to be bound by Microsoft’s Discovery Requests, definitions or instructions to the extent that they attempt to impose obligations inconsistent with or not required by the Federal Rules of Civil Procedure, the Local Civil Rules, or other applicable law.

GENERAL OBJECTIONS

1. ODS objects to the Discovery Requests to the extent they are overbroad, are not relevant to the subject matter of the above-captioned case and are not reasonably calculated to lead to the discovery of admissible evidence.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O’DONNELL/SALVATORI, INC.’S ANSWERS AND RESPONSES
TO DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION’S FOURTH SET OF REQUESTS FOR
PRODUCTION - 3
(2:20-cv-00882-MLP)

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1 2. ODS objects to the Discovery Requests to the extent they are unduly burdensome.
2 ODS has provided reasonable and responsive answers and responses in light of the burden and
3 expense of responding to the Discovery Requests for production.

4 3. ODS objects to the Discovery Requests to the extent they purport to require ODS
5 to review each and every document in each of its files, or to interview every agent or employee.
6 ODS has used reasonable diligence to obtain and provide responsive, properly discoverable
7 information by examining those sources reasonably expected to yield such information.

8 4. ODS objects to the Discovery Requests to the extent they seek information
9 protected by the attorney-client privilege, work product privilege or any other privilege.

10 5. ODS objects to the Discovery Requests to the extent they seek sensitive personal
11 employee information and information that is confidential. Relevant and responsive confidential
12 information will be provided to Plaintiff subject to the terms of a protective order.

13 6. ODS objects to the Discovery Requests to the extent they use terms that are vague,
14 ambiguous and susceptible of more than one meaning. ODS has done their best to understand all
15 such terms and have answered the Discovery Requests based on its understanding of those terms.

16 7. ODS objects to the definitions of the term “identify” or “identity” or other similar
17 terms set forth in Plaintiff’s instructions, as those definitions impose obligations that are broader
18 than ODS’s obligations under this Court’s Rules.

19 8. ODS objects to any request(s) to the extent that it seeks information about events
20 outside of the limitations period, as such information/documents will be unusually burdensome
21 to determine or collect, not reasonably calculated to lead to admissible evidence, and may have
22 been destroyed in the normal course of business or no longer able to be determined because
23 individuals with information are no longer employees of ODS.

24
25 PLAINTIFF/COUNTERCLAIM DEFENDANT
O’DONNELL/SALVATORI, INC.’S ANSWERS AND RESPONSES
TO DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION’S FOURTH SET OF REQUESTS FOR
PRODUCTION - 4
(2:20-cv-00882-MLP)

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9. Discovery and investigation in this matter are continuing. These responses are based on, and therefore necessarily limited by, the records and information still in existence, presently recollected and thus far discovered and made available to counsel. ODS reserves the right to amend or supplement any of its responses or answers below if it appears at any time that omissions or errors have been made or that more accurate information is available.

10. Each of ODS's general objections are incorporated by reference in the responses to each of the individual Discovery Requests set forth below. ODS's responses to any of the Discovery Requests shall not be construed as constituting a waiver of any of ODS's general objections, whether or not such objections are reiterated in the answers.

RESPONSES TO FOURTH SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 33: Please produce in native format all music, audio, and other electronic files created in connection with the production of the music you delivered to Microsoft under the ICA.

RESPONSE:

Objection. This Request is seeking information that is readily available to Microsoft through information and documents already in Microsoft's custody/possession. To the extent that these documents are in the possession of a nonparty, the request for documents are not appropriately addressed to ODS.

Subject to and without waiving these objections, ODS responds as follows:

All music, audio, and other electronic files created in connection with ODS's production of the music it delivered under the ICA that is in ODS's possession would have been captured by David Stenhouse's forensic imaging of ODS's devices and produced to Microsoft. Thus it is already in Microsoft's possession.

Additionally, other music, audio, and/or other electronic files—if any—that were not obtained via Mr. Stenhouse's forensic imaging would likely be in the possession and control of a third party. Some music under the ICA was composed and/or recorded at Bungie, Inc.'s studio, and would therefore be in the possession and control of Bungie, Inc.

Any audio files, music files, or other electronic files of music created under the ICA in ODS's possession and that were recorded in an ODS studio would have been captured in David Stenhouse's forensic imaging of ODS's devices.

Discovery is ongoing and ODS reserves the right to supplement this response if necessary.

REQUEST FOR PRODUCTION NO. 34: Please produce all communications accompanying or responding to your delivery of music under the ICA.

Objection. The Request is overly broad and unduly burdensome. ODS further objects to this Request as seeking information that is readily available to Microsoft through documents already in Microsoft's custody/possession. ODS also objects to the extent any requested documents contain information protected by the attorney-client privilege, work product privilege or any other privilege.

Subject to and without waiving these objections, ODS responds as follows:

Documents evincing such communications that are responsive to this request have already been provided to Microsoft via Mr. Stenhouse's imaging of ODS's devices. Any additional documents evincing such communications are solely in Microsoft's possession and control as Mr. Martin O'Donnell's prior Microsoft/Bungie email account is no longer accessible to him.

Discovery is ongoing and ODS reserves the right to supplement this response if necessary.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S ANSWERS AND RESPONSES
TO DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FOURTH SET OF REQUESTS FOR
PRODUCTION - 6
(2:20-cv-00882-MLP)

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REQUEST FOR PRODUCTION NO. 35: Please produce a copy of the “Bungie contract” you allege “stated that ODS wholly owned the original Halo music and would license it to be used in Bungie’s Halo game and Bungie’s marketing,” as mentioned in your Supplemental Answer to Microsoft’s Interrogatory No. 7.

RESPONSE:

See Bates No. ODS 0005164. See also Bates No ODS 0005165.

Discovery is ongoing and ODS reserves the right to supplement this response if necessary.

ATTORNEY CERTIFICATION

ANSWERS, RESPONSES, AND OBJECTIONS DATED this 17th day of September, 2021, in compliance with Fed. R. Civ. P. 26(g).

s/ Mark Lawrence Lorbiecki
Mark Lawrence Lorbiecki, WSBA # 16796
s/ Daniel A. Brown
Daniel A. Brown, WSBA # 22028
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***Attorneys for Plaintiff/Counterclaim
Defendant O'Donnell/Salvatori, Inc.***

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S ANSWERS AND RESPONSES
TO DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FOURTH SET OF REQUESTS FOR
PRODUCTION - 7
(2:20-cv-00882-MLP)

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EXHIBIT 10

David Stenhouse
October 07, 2021

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC.,

an Illinois corporation,

Plaintiff,

vs.

Case No. 2:20-cv-00882-MLP

MICROSOFT CORPORATION,

a Washington corporation,

Defendant.

VIDEOTAPED DEPOSITION OF DAVID STENHOUSE

APPEARING REMOTELY FROM

KING COUNTY, WASHINGTON

October 7, 2021

10:00 a.m.

STENOGRAPHICALLY REPORTED BY:

Lisa I. Kroon, RPR

CCR No. 2904, State of Washington

APPEARING REMOTELY FROM DESCHUTES COUNTY, OREGON

David Stenhouse
October 07, 2021

REMOTE APPEARANCES

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FOR THE DEFENDANT:

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benbyer@dwt.com

ALSO PRESENT:

ZACH HOOVER, VIDEOGRAPHER

1 included one of these search terms?

2 A. Just documents that included a search term.

3 Q. And did -- before running these terms, did
4 you apply any sort of OCRing to image files or PDFs?

5 A. Yes. I was going to add that. I just
6 thought about that when you asked that question.

7 PDFs and TIFF files -- T-I-F or T-I-F-F -- I
8 will run an OCR across those and apply the same search
9 criteria to them also.

10 Q. What about other image files such as JPGs or
11 other forms of byte maps?

12 A. No.

13 Q. How did you search for -- or did you in any
14 way attempt to locate responsive audio files?

15 A. I did not.

16 Q. I'm trying to think of other file types that
17 we haven't talked about. I can't think of any.

18 Were there any other file types beyond the
19 TIFFs and the PDFs that you've mentioned that you OCR'd
20 that you handled in any other -- or that you processed
21 in any other way?

22 A. I can't think of any other.

23 Q. So now let's talk about the documents that
24 you had set aside as responding to these search terms.

25 What did you do next with those?

1 information across Mr. O'Donnell's information?

2 A. No. And the reason I do that is this data
3 gets sent to litigation support companies, such as
4 Lighthouse, and the data needs to be tracked back to
5 the origin, and so because of that I do it in that
6 manner that it doesn't get confusing once it leaves my
7 hands.

8 Q. And then -- so that sort of cross custodial
9 deduping, you would rely on -- that would be available
10 for someone like Lighthouse to do, but you didn't do
11 that yourself?

12 A. Yeah, I try to stay away from it to keep
13 things neat and tidy.

14 Q. And did you do anything particular when it
15 came to Mr. Salvatori's or Mr. O'Donnell's material to
16 identify potentially responsive audio files?

17 A. No.

18 Q. And any audio files they had then would have
19 only fallen into your production set if the file name
20 or the folder structure hit on a search term; is that
21 correct?

22 A. I would have excluded certain types of media
23 files, as far as doing my searches, and there's a
24 couple of reasons for that.

25 First, I always -- I generally will ask my

1 client, are we including audio or images involved in
2 this stuff to do searches because searches won't hit
3 within the content of them.

4 And then, secondly, I have to process the
5 data, and although I can skip the content of audio, it
6 makes things messier, so I -- those items weren't as --
7 part of this other process that I'm talking about as
8 far as running searches and filtering.

9 Q. What do you mean when you say you have to
10 process the data? What does that mean?

11 A. Well, if there's a hundred gigs of audio
12 files -- which I don't know if there is -- I'm just
13 using that as an example -- I have to move that over to
14 my system which takes up a hundred gigs of my space,
15 and it's just -- if I don't need to do it, I don't.

16 Q. And in this case they were excluded from
17 this process?

18 A. Yes.

19 Q. And -- and you -- in addition to the
20 material that we -- actually, do you know whether --
21 and so as a result of that, your -- the materials that
22 you provided to counsel would have excluded any audio
23 files that existed; correct?

24 A. Yes, unless they were attachments to an
25 email message, or they might have been embedded in a

1 PDF or a PowerPoint or something like that. There
2 wouldn't have been a set of audio data that I would
3 have sent them.

4 Q. Actually, that's a good question. I had a
5 question on how you handled attachments. So how did
6 you handle dealing with attachments in email based on
7 search term hits?

8 A. They belong to -- well, first of all, an
9 email message is a top-level item or it's -- you'll
10 hear the term "parent." An attachment would be a
11 child, and then there also might be embedded files in
12 that attachment that are also children of the
13 attachment and then the parent. That's all a family.
14 I keep those all together. So if there's a hit within
15 any of those, I provide the entire family, which is the
16 top-level message, to the client for their review. I
17 don't separate that data.

18 Q. Okay. So if you had an email and it had a
19 single attachment, and you had no hits in the email but
20 the attachment had a hit, you would provide both?

21 A. That's correct.

22 Q. And then conversely, if the email had a hit
23 but the attachment didn't, you would still provide
24 both?

25 A. Yes.

EXHIBIT 11

MICROSOFT CORPORATION EMPLOYEE AGREEMENT ("Agreement")

In consideration of the employment offered to me by MICROSOFT CORPORATION ("MICROSOFT"), a Washington corporation, and the compensation now and hereafter paid to me, I agree as follows:

1. **Best Efforts/Conflicting Interest/Moonlighting.** I will diligently perform my assigned duties and devote my entire working time, abilities and efforts to such duties and to furthering the best interests of MICROSOFT. During my employment, I will not engage in any activity or investment that (a) conflicts with MICROSOFT's business interests, (b) occupies my attention so as to interfere with the proper and efficient performance of my duties for MICROSOFT, or (c) interferes with the independent exercise of my judgment in MICROSOFT's best interests. An investment of less than 1% of the shares of a company traded on a registered stock exchange is not a violation of this paragraph. I will comply with MICROSOFT's policies regarding disclosure and approval of work outside of MICROSOFT ("moonlighting" activities), as those policies may be amended from time to time.

2. **Employment Terminable At Will, With or Without Cause, By Employee or Microsoft.** I acknowledge and agree that my employment with MICROSOFT is not for any specific or minimum term, that its continuation is subject to MICROSOFT's and my mutual consent, and that it is terminable at will, meaning that either MICROSOFT or I will be free to terminate my employment at any time, for any reason or no reason, with or without cause, and with or without notice, pre-termination warning or discipline, or other pre- or post-termination procedures of any kind. I acknowledge and agree that any prior representations to the contrary are void and superseded by this Agreement. I am not entitled to rely and I shall not rely on any future representations to the contrary, whether written or verbal, express or implied by any statement, conduct, policy, handbook, guideline or practice of MICROSOFT or its employees or agents. Any such future contrary representations will not modify this Agreement or my at will status. Notwithstanding paragraph 14 below, my at will status may only be modified by a formal written "Employment Contract" signed by me and an officer of MICROSOFT and containing language expressly stating MICROSOFT's agreement to modify the terms of this Agreement.

3. **Non-Disclosure.** During my employment and at all times thereafter, I will not disclose to anyone outside MICROSOFT nor use for any purpose other than my work for MICROSOFT: a) any MICROSOFT confidential or proprietary information or trade secrets; or b) any information MICROSOFT has received from others that it is obligated to treat as confidential or proprietary. I will not disclose confidential or proprietary information or trade secrets to other MICROSOFT employees except on a "need-to-know" basis, and I will not disclose third party confidential or proprietary information except as permitted by any applicable agreement between MICROSOFT and the third party. "Confidential or proprietary information or trade secrets" means all data and information in whatever form, tangible or intangible, that is not generally known to the public and that relates to the business, technology, practices, products, marketing, sales, services, finances, or legal affairs of MICROSOFT or any third party doing business with or providing information to MICROSOFT, including without limitation: information about actual or prospective customers, suppliers and business partners; business, sales, marketing, technical, financial and legal plans, proposals and projections; concepts, techniques, processes, methods, systems, designs, programs, code, formulas, research, experimental work and work in progress. If I have any questions as to what comprises such confidential or proprietary information or trade secrets, or to whom it may be disclosed, I will consult my manager.

4. **Assignment of Inventions.** I will make prompt and full disclosure to MICROSOFT, will hold in trust for the sole benefit of MICROSOFT, and will assign exclusively to MICROSOFT all my right, title, and interest in and to any and all inventions, discoveries, designs, developments, improvements, copyrightable material, and trade secrets (collectively herein "Inventions") that I solely or jointly may conceive, develop, author, reduce to practice or otherwise produce during my employment with MICROSOFT. I waive and quitclaim to MICROSOFT any and all

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claims of any nature whatsoever in the past, now or hereafter may have for infringement of any patent application, patent, or other intellectual property right relating to any Inventions so assigned to MICROSOFT.

My obligation to assign shall not apply to any Invention about which I can prove all of the following:

- a) it was developed entirely on my own time;
- b) no equipment, supplies, facility, services, or trade secret information of MICROSOFT were used in its development;
- c) it does not relate (i) directly to the business of MICROSOFT or (ii) to the actual or demonstrably anticipated business, research or development of MICROSOFT; and
- d) it does not result from any work performed by me for MICROSOFT.

I will assign to MICROSOFT or its designee all my right, title, and interest in and to any and all Inventions full title to which may be required to lie in the United States government by any contract between MICROSOFT and the United States government or any of its agencies. In addition to the rights provided to MICROSOFT under paragraph 5 below, as to any Invention complying with 4(a)-(d) above that results in any product, service or development with potential commercial application, MICROSOFT shall be given the right of first refusal to obtain exclusive rights to the Invention and such product, service or development. - S E E L I S T

5. Excluded and Licensed Inventions. I have attached a list describing all Inventions belonging to me and made by me prior to my employment with MICROSOFT that I wish to have excluded from this Agreement. If no such list is attached, I represent that there are no such Inventions. As to any Invention in which I have an interest at any time prior to or during my employment, if I use or incorporate such an Invention in any released or unreleased MICROSOFT product, service, program, process, machine, development or work in progress, or if I permit MICROSOFT to use or incorporate such an Invention, MICROSOFT is hereby granted and shall have an exclusive royalty-free, irrevocable, worldwide license to exercise any and all rights with respect to such Invention, including the right to protect, make, have made, use, and sell that Invention without restriction as to the extent of my ownership or interest. - S E E L I S T

6. Applications for Copyrights & Patents. At any time during my employment and thereafter, I will execute any proper oath or verify any proper document in connection with carrying out the terms of this Agreement. If because of my incapacity or for any other reason MICROSOFT is unable to secure my signature to apply for or pursue any application for or registration of any U.S. or foreign patent or copyright covering Inventions assigned to MICROSOFT as stated above, I hereby irrevocably appoint MICROSOFT and its duly authorized officers and agents as my agent and attorney in fact, to act in my stead to execute and file any such applications and to do all other lawful acts to further the prosecution, issuance, maintenance or enforcement of U.S. and foreign patent applications, patents and copyrights thereon with the same legal force and effect as if executed by me. In furtherance of this Agreement, I will testify at MICROSOFT's request and expense in any legal proceeding arising during or after my employment.

7. Prior Employers & Obligations. I warrant that my employment with MICROSOFT will not violate any contractual obligations I have. I will not use during my employment with MICROSOFT nor disclose to MICROSOFT any confidential or proprietary information or trade secrets of my former or current employers, principals, partners, co-venturers, clients, customers, or suppliers, and I will not bring onto MICROSOFT's premises any unpublished document or any property belonging to any such persons or entities without their consent. I will honor any non-disclosure, proprietary rights, or other contractual agreements I may have with any person or entity, and I have disclosed to MICROSOFT any such agreements that may bear on my employment with MICROSOFT.

8. Return of Materials. When my employment with MICROSOFT ends, I will immediately return to MICROSOFT all papers, drawings, notes, manuals, specifications, designs, devices, code, email, documents, diskettes and tapes, and any other material in any form or media containing any confidential or proprietary

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information or trade secrets, as defined in paragraph 3 above. I will also return any keys, access cards, credit cards, identification cards and other property and equipment belonging to MICROSOFT. All materials, data and information stored on or transmitted using MICROSOFT owned or leased property or equipment is the property of MICROSOFT and is subject to access by MICROSOFT at any time without further notice.

9. Non-Competition & Non-Solicitation. While employed at MICROSOFT and for a period of one year thereafter, I will not: (a) accept employment or engage in activities where the successful fulfillment of my duties would necessitate the use or disclosure of any confidential, proprietary or trade secret information that I obtained while employed at MICROSOFT (this does not supercede or limit my obligations to Paragraph 3 while employed at MICROSOFT); (b) render services in any capacity to any client or customer of MICROSOFT for which I performed services during the twelve months prior to leaving MICROSOFT's employ; (c) induce, attempt to induce, or assist another to induce or attempt to induce any person to terminate his employment with MICROSOFT or to work for me or for any other person or entity. If during or after my employment with MICROSOFT I seek work elsewhere, I will provide a copy of this Agreement to any persons or entities by whom I am seeking to be hired before accepting employment with or engagement by them.

10. Reimbursement. I hereby authorize MICROSOFT, at any time during my employment or following my termination, to withhold the following from any monies it otherwise owes me (including without limitation salary, bonus, commissions, expense reimbursements, and ESPP refunds): any and all monies due to MICROSOFT from me (including without limitation cash and travel advances, amounts I owe the Company Store, overpayments made to me by MICROSOFT, amounts received by me due to MICROSOFT's error, unpaid credit or phone card charges, or any debt I owe MICROSOFT for any reason, including misuse or misappropriation of company assets). Further, I agree that MICROSOFT may condition the exercise of any stock options I may receive by requiring me to (a) sell a sufficient number of shares to generate cash to repay any such amounts I owe to MICROSOFT and (b) remit such cash to MICROSOFT.

11. Personal Property. I agree that MICROSOFT is not responsible for loss of or damage to personal property on MICROSOFT premises or, if applicable, on residential premises subsidized by MICROSOFT (including apartments or temporary housing). I hold MICROSOFT harmless from any and all claims relating to loss of or damage to such personal property.

12. Equitable Relief. I acknowledge that any violation of this Agreement by me will cause irreparable injury to MICROSOFT and shall entitle MICROSOFT to extraordinary relief in court, including but not limited to temporary restraining orders and preliminary and permanent injunctions, without the necessity of posting bond or security.

13. Non-Waiver & Attorneys' Fees. Waiver by either me or MICROSOFT of strict performance of any provision of this Agreement shall not be a waiver of, nor prejudice either party's right to require, strict performance of the same or any other provision in the future. If court proceedings are brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to an award of reasonable and necessary expenses of litigation, including reasonable attorneys' fees.

14. General. I agree that this Agreement shall be governed for all purposes by the laws of the State of Washington as such laws apply to contracts performed within Washington by its residents and that exclusive venue and exclusive personal jurisdiction for any action arising out of this Agreement shall lie in state or federal court located in King County, Washington. If a court declares any provision of this Agreement excessively broad, it shall be enforced to the maximum extent permissible by law. If a court declares any provision of this Agreement void, it shall be severed from this Agreement, the remainder of which shall remain in full force and effect. This Agreement sets forth the entire agreement of MICROSOFT and myself as to the subjects discussed herein, and it may not be

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Case 2:20-cv-00882-MLP Document 158 Filed 02/22/22 Page 100 of 129
modified except by a subsequent written agreement signed by me and an officer of MICROSOFT. The terms and conditions of this Agreement shall survive termination of my employment.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

HAVING READ AND FULLY UNDERSTOOD THIS AGREEMENT, a copy of which has been provided to me, I sign my name this 31 day of JULY, 2000

Martin O'Donnell
Signature

Inventions listed on attached: ☒ Yes ☐ No

MARTIN O'DONNELL
Name (Print)

Last revised 3/1/98

MS
Witness

mlurk

EXCLUDED AND LICENSED INVENTIONS LIST

ANY AND ALL MUSIC/SOUND DESIGN
OWNED BY O'DONNELL/SALVATORI INC.
INCLUDING MUSIC WRITTEN FOR AND
USED IN "HALO" PROMOTIONAL VIDEOS
AND MULTI-MEDIA PRESENTATIONS.

- I'M AN ASCAP COMPOSER AND
MUST BE LISTED AS SUCH ON ANY
ASCAP COMPOSITION.

EXHIBIT 12

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois
corporation,

Plaintiff/Counterclaim
Defendant,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant/Counterclaim
Plaintiff.

NO. 2:20-cv-00882-MLP

**PLAINTIFF/COUNTERCLAIM
DEFENDANT
O'DONNELL/SALVATORI, INC.'S
FOURTH SUPPLEMENTAL ANSWERS
AND RESPONSES TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF
INTERROGATORIES, REQUESTS
FOR PRODUCTION, AND REQUESTS
FOR ADMISSION**

TO: DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT CORPORATION;

AND TO: All Attorneys of Record.

Plaintiff/Counterclaim Defendant O'Donnell/Salvatori, Inc. ("ODS"), by and through its attorneys, further responds to Defendant/Counterclaim Plaintiff Microsoft Corporation's ("Microsoft") First Set of Interrogatories, Requests for Production, and Requests for Admission ("Discovery Requests") to ODS as follows:

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PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 1
(2:20-cv-00882-MLP)

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Seattle, WA 98101-2380
(206) 628-6600

Defendant Microsoft Corporation submits its First Set of Interrogatories and First Requests for Production of Documents (“Discovery Requests”) to Plaintiff O’Donnell/Salvatori, Inc. (“Plaintiff”).

I. INSTRUCTIONS

1. Federal Rules of Civil Procedure 26, 33, 34, and 36 govern these Discovery Requests. In answering them, please furnish all information within your possession, custody, or control, i.e., including information obtained directly by you, your attorneys, agents, assigns, representatives, or anyone acting on your or their behalf. If you cannot answer these Requests in full, answer to the extent possible, specify the reasons for your inability to answer the remainder, and state whatever information or knowledge you have concerning the unanswered portion.

2. Please verify your answers on the form provided after the last request and serve a completed set of requests along with answers on Microsoft within 30 days after receipt of these requests. Service should be made to the office of Microsoft’s attorneys electronically, to ambikadoran@dwt.com, xiangli@dwt.com, and erickamitterndorfer@dwt.com. You may also serve hard copies at Davis Wright Tremaine LLP, 920 Fifth Avenue, Suite 3300 Seattle, Washington 98104-1610.

3. Please supplement your responses and production as required under Federal Rule of Civil Procedure 26.

II. DEFINITIONS

1. **You, Your, Plaintiff, ODS.** “You,” “Your,” “ODS,” and “Plaintiff” means O’Donnell/Salvatori, Inc. as well as any employees, agents, representatives, or persons acting on Your behalf.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O’DONNELL/SALVATORI, INC.’S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION’S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 2
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
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Seattle, WA 98101-2380
(206) 628-6600

2. **Complaint.** “Complaint” means the Complaint that You filed against Microsoft in King County Superior Court on or around March 10, 2020.

3. **ICA.** “ICA” means the “Independent Contractor Agreement” that Microsoft and Plaintiff entered on August 28, 2002, and includes the subsequent Amendments and Confirmatory Work-Made-For-Hire and Backup Assignment Agreement.

4. **Amendments.** “Amendments” means the First Amendment, Second Amendment (including the Confirmatory Work-Made-For-Hire and Backup Assignment Agreement), Third Amendment, Fourth Amendment, and Fifth Amendment referenced in Paragraphs 10-23 of the Complaint and attached in part to the Complaint.

5. **Halo Music.** “Halo Music” means the music Microsoft commissioned Plaintiff to compose under the ICA.

6. **Halo Games.** “Halo Games” means Microsoft’s Halo video game series.

PRELIMINARY STATEMENT

Pursuant to Fed. R. Civ. P. and LCR 26, 33, 34, and 36 ODS submits the following Answers and Responses to Microsoft’s First Set of Interrogatories, Requests for Production, and Requests for Admission (“Discovery Requests”) based upon information available at this time. The answers and responses provided are made in a good faith effort to supply as much factual information as is presently known. ODS will continue discovery and investigation—some of which has been requested, but not yet furnished—with respect to the subject matter of this litigation. ODS therefore respectfully reserves the right to rely upon, and/or present at trial or other hearing on this matter, any facts or documents that may be subsequently learned or obtained

PLAINTIFF/COUNTERCLAIM DEFENDANT
O’DONNELL/SALVATORI, INC.’S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION’S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 3
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

as a result of such ongoing discovery and investigation, or which may be adduced at trial. This may include supplementing or revising its responses, if necessary.

ODS objects to and declines to be bound by Microsoft's Discovery Requests, definitions or instructions to the extent that they attempt to impose obligations inconsistent with or not required by the Federal Rules of Civil Procedure, the Local Civil Rules, or other applicable law.

ODS objects to the following First Set of Requests for Admission to the extent it requires a certain response format that is not required by the Federal Rules of Civil Procedure, the Local Civil Rules, or other applicable law. Any Request for Admission or portion thereof that is not specifically admitted or denied, is hereby denied.

GENERAL OBJECTIONS

1. ODS objects to the Discovery Requests to the extent they are overbroad, are not relevant to the subject matter of the above-captioned case and are not reasonably calculated to lead to the discovery of admissible evidence.

2. ODS objects to the Discovery Requests to the extent they are unduly burdensome. ODS has provided reasonable and responsive answers and responses in light of the burden and expense of responding to the Discovery Requests for production.

3. ODS objects to the Discovery Requests to the extent they purport to require ODS to review each and every document in each of its files, or to interview every agent or employee. ODS has used reasonable diligence to obtain and provide responsive, properly discoverable information by examining those sources reasonably expected to yield such information.

4. ODS objects to the Discovery Requests to the extent they seek information protected by the attorney-client privilege, work product privilege or any other privilege.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 4
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

1 5. ODS objects to the Discovery Requests to the extent they seek sensitive personal
2 employee information and information that is confidential. Relevant and responsive confidential
3 information will be provided to Plaintiff subject to the terms of a protective order.

4 6. ODS objects to the Discovery Requests to the extent they use terms that are vague,
5 ambiguous and susceptible or more than one meaning. ODS has done their best to understand all
6 such terms and have answered the Discovery Requests based on its understanding of those terms.

7 7. ODS objects to the definitions of the term “identify” or “identity” or other similar
8 terms set forth in Plaintiff’s instructions, as those definitions impose obligations that are broader
9 than ODS’s obligations under this Court’s Rules.

10 8. ODS objects to any request(s) to the extent that it seeks information about events
11 outside of the limitations period, as such information/documents will be unusually burdensome
12 to determine or collect, not reasonably calculated to lead to admissible evidence, and may have
13 been destroyed in the normal course of business or no longer able to be determined because
14 individuals with information are no longer employees of ODS.

15 9. Discovery and investigation in this matter are continuing. These responses are
16 based on, and therefore necessarily limited by, the records and information still in existence,
17 presently recollected and thus far discovered and made available to counsel. ODS reserves the
18 right to amend or supplement any of its responses or answers below if it appears at any time that
19 omissions or errors have been made or that more accurate information is available.

20 10. Each of ODS’s general objections are incorporated by reference in the responses
21 to each of the individual Discovery Requests set forth below. ODS’s responses to any of the
22
23

24 PLAINTIFF/COUNTERCLAIM DEFENDANT
25 O’DONNELL/SALVATORI, INC.’S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION’S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 5
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

Without waiving the aforementioned objections, ODS designates the following experts:

Timothy O. Salzman

Professor of Music
School of Music
Box 353450
University of Washington
Seattle, WA 98195
Email: salzman@u.washington.edu
Phone: (206) 685-8050

Judith Greenberg Finell

Musicologist / Music Consultant / Expert Witness
c/o Judith Finell MusicServices Inc.
4712 Admiralty Way, Suite 918, Marina Del Rey, CA 90292
81 Pondfield Road, Suite 246, Bronxville, NY 10708
Phone: (310) 301-3338
Email: judi@jfmusicservices.com

Cedar Boschan

Forensic Accountant
Boschan Corp.
10866 Washington Blvd., #1205
Culver City, CA 90232
Phone: (424) 248-8866
Email: cedar@boschan.com

Discovery is ongoing and ODS reserves the right to supplement.

FOURTH SUPPLEMENTAL RESPONSES

TO FIRST SET OF REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents referenced in, or that

You referred to or relied upon, in forming Your answers to any Interrogatories and Requests for

Admission propounded by Microsoft.

RESPONSE:

Objection. The Request is overly broad, unduly burdensome, and lacks specificity as to the documents requested as it contains no limitations as to time, scope or subject matter.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 57
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

ODS further objects to this Request as seeking information that is readily available to Microsoft through documents already in Microsoft's custody/possession. ODS also objects to the extent any requested documents contain information protected by the attorney-client privilege, work product privilege or any other privilege.

Subject to and without waiving these objections, ODS responds as follows:

To the extent that this overly broad Request can be understood, ODS is providing all non-privileged responsive documents in its possession, custody, or control. Many of the most relevant documents, especially as related to damages but also relative to liability, have been in the exclusive control of Microsoft and will be identified once Microsoft responds in full good faith to pending discovery.

See documents produced herewith with Bates Nos. ODS 000001-548. Discovery is ongoing and ODS reserves the right to supplement, if necessary.

FOURTH SUPPLEMENTAL RESPONSE

See Bates Nos. ODS 000001-005169.

REQUEST FOR PRODUCTION NO. 2: Please produce documents sufficient to evidence the damages You seek in Your Complaint.

RESPONSE:

Objection. The Request is overly broad, unduly burdensome, and vague as to "sufficient to evidence...". ODS also objects on the grounds that this Request is premature as discovery has just begun and is ongoing. ODS further objects to this Request as seeking information that is readily available to Microsoft through documents already in Microsoft's custody/possession. ODS also objects to the extent any requested documents contain information protected by the attorney-client privilege, work product privilege or any other privilege.

Subject to and without waiving these objections, ODS responds as follows:

The most relevant documents have been in the exclusive control of Microsoft and will be identified once Microsoft responds in full good faith to pending discovery. To the extent that damages can be calculated, the relevant documents will be identified when produced. *See also*, Answer to Interrogatory No. 12, which ODS restates its Objections and Answer as though set out fully herein.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 58
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

000203-355, ODS 000372-376, ODS 000383, ODS 000392-398, ODS 000400, ODS 000426, ODS 000437-443, ODS 000452-479, ODS 000483-487, ODS 000495-496, ODS 000502-503, and ODS 000514-548. Discovery is ongoing and ODS reserves the right to supplement, if necessary.

SUPPLEMENTAL RESPONSE:

Subject to and without waiving the above objections, ODS responds as follows:

See documents produced herewith with Bates Nos. ODS 000549-554, ODS 000569-576, ODS 000594, ODS 000607-673, ODS 000714-744, ODS 000755-802, ODS 000807-822, ODS 000862-909, ODS 000945-946, ODS 000954-957, and ODS 000983. Discovery is ongoing and ODS reserves the right to further supplement, if necessary.

REQUEST FOR PRODUCTION NO. 8: Please produce all agreements or contracts between

Microsoft and Marty O'Donnell.

RESPONSE:

Objection. The Request is overly broad, unduly burdensome, and vague as to "all agreements or contracts...". ODS further objects to this Request as seeking information that is readily available to Microsoft through documents already in Microsoft's custody/possession.

Subject to and without waiving these objections, ODS responds as follows:

ODS is providing a copy of the Microsoft Corporation Employee Agreement between Microsoft and Mr. O'Donnell (dated July 31, 2000), which Microsoft has, or should have, in its custody/possession.

See documents produced herewith with Bates Nos. ODS 000504-508. Discovery is ongoing and ODS reserves the right to supplement, if necessary.

REQUEST FOR PRODUCTION NO. 9: Please produce all agreements or contracts between

Marty O'Donnell and Bungie, Inc. regarding any music composed for the Halo Games.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 64
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

Microsoft has received an assignment of all copyright rights relative to any music composed for the Halo Games and for which it would be appropriate for ODS to assert a takedown demand. No such documents have been generated by ODS.

ODS does not have any documents responsive to this request in his custody/possession. Discovery is ongoing and ODS reserves the right to supplement, if necessary.

REQUEST FOR PRODUCTION NO. 30: Please produce all take-down notices (whether or not sent), regarding any item, musical composition, or other material within “the WORK,” as defined in the ICA, as amended.

RESPONSE:

Objection. ODS restates as though set out fully herein its Objection and Response to Request for Production No. 29.

Subject to and without waiving these objections, ODS responds as follows:

ODS is providing two Copyright Claims Mr. O'Donnell received from YouTube on March 12, 2020 and March 15, 2020 regarding “Reach Music Inception Pt 1” and Reach Music Inception Pt 2.”

See documents produced herewith with Bates Nos. ODS 000498-501. Discovery is ongoing and ODS reserves the right to supplement, if necessary.

SUPPLEMENTAL RESPONSES TO FIRST SET OF REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: *[incorrectly numbered as Request for Admission No. 14]* Admit that the parties’ agreement governing composition of and compensation for the Halo Music is contained in Exhibits A to F of the Complaint (Dkt. 1, Ex. 1) and Exhibit 1 to the Declaration of Ambika K. Doran (Dkt. 12-1 at 160).

RESPONSE:

Admit, except to the extent that the License Agreement between Bungie Software Products Corporation and ODS (dated March 22, 2000) has attenuated the rights received

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 84
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

by Microsoft through some impact, ODS admits that the documents contained in Exhibits A to F of the Complaint (Dkt. 1, Ex. 1) and Exhibit 1 to the Declaration of Ambika K. Doran (Dkt. 12-1 at 160), constitute the entirety of documents that govern the ownership of the Halo Music as described therein.

REQUEST FOR ADMISSION NO. 2: *[incorrectly numbered as Request for Admission No. 15]* Admit that, aside from the documents identified in Request for Admission No. 1, there is no other agreement between the parties governing composition of and compensation for the Halo Music.

RESPONSE:

Admit, except to the extent that the License Agreement between Bungie Software Products Corporation and ODS (dated March 22, 2000) may have some impact.

SUPPLEMENTAL RESPONSE:

Admit, further asserting that no other agreement with Bungie Software Products has any impact governing composition and compensation for Halo Music.

REQUEST FOR ADMISSION NO. 3: *[incorrectly numbered as Request for Admission No. 16]* Admit that Microsoft and Plaintiff have not modified the ICA through any contracts other than the Amendments.

RESPONSE:

Admit.

SUPPLEMENTAL RESPONSE:

By its terms, the Confirmatory Work-Made-For-Hire and Backup Assignment Agreement is a modification of the ICA distinct from the Amendments.

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 85
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

ATTORNEY CERTIFICATION

THIRD SUPPLEMENTAL ANSWERS, RESPONSES, AND OBJECTIONS DATED
this ____ day of October, 2021, in compliance with Fed. R. Civ. P. 26(g).

s/ Mark Lawrence Lorbiecki

Mark Lawrence Lorbiecki, WSBA # 16796

s/ Daniel A. Brown

Daniel A. Brown, WSBA # 22028

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***Attorneys for Plaintiff/Counterclaim
Defendant O'Donnell/Salvatori, Inc.***

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 86
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

VERIFICATION

I, _____, declare under penalty of perjury under the laws of the State of Washington that I am a representative of Plaintiff/Counterclaim Defendant O'Donnell/Salvatori, Inc., and I am authorized to make this verification on its behalf; I have read the foregoing Third Supplemental Answers and Responses to Microsoft's First Set of Interrogatories, Requests for Production, and Requests for Admission, know the contents thereof, and believe the same to be true and correct to the best of my knowledge.

DATED this _____ day of May, 2021.

SIGNED at: _____, _____, _____ County.

Print Name

Title

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 87
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served upon counsel of record at the address and in the manner described below a copy of the document to which this certificate is attached for delivery to the following:

<p>Ambika Kumar, WSBA #38237 Xiang Li, WSBA #52306 DAVIS WRIGHT TREMAINE LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104 Tel: (206) 622-3150 Fax: (206) 757-7700 Email: AmbikaKumar@dwt.com XiangLi@dwt.com ErickaMitterndorfer@dwt.com MichelleStark@dwt.com LisaMerritt@dwt.com</p> <p><i>Attorneys for Defendant</i> Microsoft Corporation</p>	<p><input type="checkbox"/> Via ECF/Filing <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via U.S. Mail</p>
<p>Peter J. Anderson, CA Bar # 88891 DAVIS WRIGHT TREMAINE LLP 865 S Figueroa Street, Suite 2400 Los Angeles, CA 90017 Tel: (213) 633-6800 Fax: (213) 633-6899 Email: PeterAnderson@dwt.com FrankRomero@dwt.com</p> <p><i>Attorneys for Defendant</i> Microsoft Corporation</p>	<p><input type="checkbox"/> Via ECF/Filing <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Via Overnight Courier <input type="checkbox"/> Via U.S. Mail</p>

DATED this 11th day of October, 2021.

s/ Julie Larm-Bazzill
Julie Larm-Bazzill

PLAINTIFF/COUNTERCLAIM DEFENDANT
O'DONNELL/SALVATORI, INC.'S FOURTH SUPPLEMENTAL
ANSWERS AND RESPONSES TO
DEFENDANT/COUNTERCLAIM PLAINTIFF MICROSOFT
CORPORATION'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION, AND REQUESTS FOR
ADMISSION - 88
(2:20-cv-00882-MLP)

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, WA 98101-2380
(206) 628-6600

EXHIBIT 13

List of OS Music Pieces Due Outstanding Royalties
ASCAP Registration Required

Halo Combat Evolved OST (registered with ASCAP by OS while Marty O'Donnell a MS employee):

1. Opening Suite – 3:33
2. Truth and Reconciliation Suite – 8:25
3. Brothers in Arms – 1:29
4. Enough Dead Heroes – 3:00
5. Perilous Journey – 2:26
6. A Walk in the Woods – 1:52
7. Ambient Wonder – 1:57
8. The Gun Pointed at the Head of the Universe – 2:26
9. Trace Amounts – 1:51
10. Under Cover of Night – 3:41
11. What Once Was Lost – 1:40
12. Lament for Pvt. Jenkins – 1:14
13. Devils... Monsters... – 1:30
14. Covenant Dance – 1:57
15. Alien Corridors – 1:48
16. Rock Anthem for Saving the World – 1:17
17. The Maw – 1:06
18. Drumrun – 1:01
19. On a Pale Horse – 1:35
20. Perchance to Dream – 1:00
21. Library Suite – 6:47
22. The Long Run – 2:12
23. Suite Autumn – 4:22
24. Shadows – 0:59
25. Dust and Echoes – 2:49
26. Halo – 4:22

Halo 2 OST Volume 1 (registered with ASCAP by OS while Marty O'Donnell a MS employee):

1. Halo Theme MJOLNIR Mix - 4:11
3. Peril - 2:46
4. Ghosts of Reach - 2:22
6. Heretic, Hero - 2:34
7. Flawed Legacy - 1:58
8. Impend - 2:21
9. Never Surrender - 3:35
10. Ancient Machine - 1:38
12. In Amber Clad - 1:39
13. The Last Spartan - 2:18
14. Orbit of Glass - 1:18
16. Heavy Price Paid - 2:31
17. Earth City - 3:06
18. High Charity - 1:59
20. Remembrance - 1:17

Halo 2 OST Volume 2 (registered with ASCAP by OS while Marty O'Donnell a MS employee):

1. Prologue – 2:35
 - Rising – 0:20

EXHIBIT

47

Martin O'Donnell 30(b...
08.31.2021

- Cloistered Expectancy – 0:25
- Weight of Failure – 1:50
- 2. Cairo Suite – 9:42
 - Cold Blue Light – 1:54
 - Waking Spartan – 3:36
 - Jeweled Hull – 2:03
 - Chill Exposure – 2:09
- 3. Mombasa Suite – 6:41
 - Metropole – 1:29
 - Broken Gates – 2:47
 - Encounter – 2:25
- 4. Unyielding - 3:04
- 5. Mausoleum Suite – 8:10
 - Destroyer's Invocation – 4:36
 - Falling Up – 1:49
 - Infected – 1:16
 - Shudder – 0:29
- 6. Unforgotten - 2:09
- 7. Delta Halo Suite – 11:29
 - Penance – 2:32
 - Wage – 2:42
 - Leonidas – 2:28
 - Dust and Bones – 3:44
- 8. Sacred Icon Suite – 7:26
 - Cortege – 3:38
 - Opening Volley – 0:28
 - Veins of Stone – 3:20
- 9. Reclaimer - 3:03
- 10. High Charity Suite – 8:29
 - Rue and Woe – 1:30
 - Respite – 2:17
 - Antediluvia – 2:22
 - Pursuit of Truth – 2:18
- 11. Finale – 3:10
 - Great Journey – 1:15
 - Thermopylae Soon – 1:55
- 12. Epilogue – 3:49
 - Beholden – 1:03
 - Road to Voi – 2:19
 - Subsume – 0:27

Halo 3 OST Disk 1 (registered with ASCAP by OS while Marty O'Donnell under contract with MS):

- 1. Luck (Arrival) – 3:25
- 2. Sierra 117
 - Released – 5:20
 - Infiltrate – 3:50
- 3. Crow's Nest
 - Honorable Intentions – 2:46
 - Last of the Brave – 3:58
 - Brutes – 5:07
- 4. Tsavo Highway
 - Out of Shadow - 4:37

- To Kill a Demon – 3:44
- 5. The Storm
 - This Is Our Land – 4:00
 - This Is the Hour – 2:08
- 6. Floodgate
 - Dread Intrusion – 5:25
 - Follow Our Brothers – 3:25
- 7. The Ark
 - Farthest Outpost – 5:14
 - Behold a Pale Horse – 5:38
 - Edge Closer – 3:03

Halo 3 OST Disk 2 (registered with ASCAP by OS while Marty O'Donnell under contract with MS):

1. The Covenant
 - Three Gates – 4:34
 - Black Tower – 6:03
 - One Final Effort 3:08
 - Gravemind
2. Cortana
 - No More Dead Heroes – 5:01
 - Keep What You Steal – 2:36
3. Halo
 - Halo Reborn – 3:59
 - Greatest Journey – 4:52
4. Ending
 - Tribute – 2:52
 - Roll Call – 5:58
 - Wake Me When You Need Me – 2:19
 - Legend – 0:40
5. Bonus Tracks
 - Choose Wisely – 1:18
 - Movement – 0:27
 - Never Forget – 3:07
 - Finish the Fight – 2:27

Halo 3 ODST OST Disk 1 (registered with ASCAP by OS while Marty O'Donnell under contract with MS):

1. Overture – 5:38
2. The Rookie – 7:29
3. More Than His Share – 5:48
4. Deference for Darkness – 6:38
5. The Menagerie – 6:09
6. Asphalt and Ablution – 6:03
7. Traffic Jam – 5:52
8. Neon Night – 5:37
9. The Office of Naval Intelligence – 8:49

Halo 3 ODST Disk 2 (registered with ASCAP by OS while Marty O'Donnell under contract with MS):

1. Bits and Pieces – 7:01
2. Skyline – 7:01
3. No Stone Unturned – 3:22
4. One Way Ride – 6:50
5. The Light at the End – 7:52
6. Data Hive – 6:03
7. Special Delivery – 10:22

8. Finale – 8:12

Halo Reach OST Disk 1 and Disk 2 (registered with ASCAP by OS while Marty O'Donnell under contract with MS):

1. Overture – 4:46
2. Winter Contingency – 12:08
3. ONI: Sword Base – 8:28
4. Nightfall – 5:40
5. Tip of the Spear – 6:05
6. Long Night of Solace – 11:46
7. Exodus – 7:18
8. New Alexandria – 8:41
9. The Package – 6:56
10. The Pillar of Autumn – 9:40
11. Epilogue – 4:29
12. From the Vault – 4:59
13. Ashes – 2:45
14. Fortress – 1:07
15. We're Not Going Anywhere – 1:13
16. At Any Cost – 2:29
17. Both Ways (Remix) – 2:17
18. Walking Away – 1:53
19. Ghosts and Glass – 2:41
20. We Remember – 2:05

Halo 1 Anniversary OST (registered with ASCAP by MS):

1. Random Slipspace Trajectory
2. Bravery, Brotherhood
3. Installation 04
4. An End of Dying
5. Pale Rider
6. Yawning Chasm
7. A Private Service
8. Rock in a Hard Place
9. Flotsam, Jetsam
10. Captain, My Captain
11. Suite Fall
12. Demons and Heretics
13. Exfiltration
14. Honest Negotiation Suite
15. Unless You Mean To Shoot
16. Infiltration
17. Strung
18. Still, Moving
19. Lions and Tigers and
20. Between Beams
21. Paranoid Illusion
22. Xenoarchaeology
23. Choreographite
24. In the Substance of it
25. How to Get Ahead in War
26. Unreliable Exploration
27. Dewy Decimate
28. First Step

29. Arborea Above
30. Bad Dream
31. Cloaked in Blackness
32. Strident
33. To Sleep
34. Marathon Sprint
35. Fragments
36. Heretic Machine
37. Unfortunate Discovery
38. Heliopause
39. Didactic Principal

Halo 2 Anniversary OST (registered with ASCAP by MS):

1. Halo Theme Gungnir Mix
2. Skyline
3. Not a Number
4. Kilindini Harbour
5. Only a Star, Only the Sea
6. A Spartan Rises
7. Unforgotten Memories
8. Second Prelude
9. This Glittering Band
10. Jeopardy
11. Halo Theme Scorpion Mix
12. Punishment
13. Promise the Girl
14. Unsullied Memory
15. Arise In Valor
16. Unwearied Heart
17. Spartan's Regret
18. Genesong (feat. Steve Vai)
19. N/A
20. N/A
21. Cryptic Whisper
22. Impart
23. Charity's Irony
24. Moon Over Mombasa
25. Trapped In Amber
26. Builder's Legacy
27. Moon Over Mombasa, Pt. 2
28. Librarian's Gift
29. Zealous Champion
30. Steward, Shepherd, Lonely Soul
31. Africa Suite
32. Prophet Suite
33. Into the Belly of the Beast
34. Cracked Legend
35. Menace No More

Halo Trilogy Soundtrack OST (registered with ASCAP by MS):

Disc: 1

1. Opening Suite
2. Truth and Reconciliation Suite

3. Brothers in Arms
4. Enough Dead Heroes
5. Perilous Journey
6. A Walk in the Woods
7. Ambient Wonder
8. The Gun Pointed at the Head of the Universe
9. Trace Amounts
10. Under Cover of Night
11. What Once Was Lost
12. Lament for Pvt. Jenkins
13. Devils... Monsters...
14. Covenant Dance
15. Alien Corridors
16. Rock Anthem for Saving the World
17. The Maw
18. Drumrun
19. On A Pale Horse
20. Perchance to Dream
21. Library Suite
22. The Long Run
23. Suite Autumn
24. Shadows
25. Dust and Echoes
26. Halo

Disc: 2 (registered with ASCAP by MS):

1. Prologue: Rising, Cloistered Expectancy, Weight of Failure
2. Cairo Suite: Cold Blue Light, Waking Spartan, Jeweled Hull, Chill Expos
3. Mombasa Suite: Metropole, Broken Gates, Encounter
4. Unyielding
5. Mausoleum Suite: Destroyer's Invocation, Falling Up, Infected, Shudder
6. Unforgotten
7. Delta Halo Suite: Penance, Wage, Leonidas, Dust and Bones
8. Sacred Icon Suite: Cortege, Opening Volley, Veins of Stone
9. Reclaimer
10. High Charity Suite: Rue and Woe, Respite, Antediluvia, Pursuit of Truth
11. Finale: Great Journey, Thermopylae Soon
12. Epilogue: Beholden, Road to Voi, Subsume
13. Halo 2, video game music: Prologue: Rising, Cloistered Expectancy, Weight of Failure
14. Halo 2, video game music: Cairo Suite: Cold Blue Light, Waking Spartan, Jeweled Hull, Chill Exposure
15. Halo 2, video game music: Mombasa Suite: Metropole, Broken Gates, Encounter
16. Halo 2, video game music: Unyielding
17. Halo 2, video game music: Mausoleum Suite: Destroyer's Invocation, Falling Up, Infected, Shudder
18. Halo 2, video game music: Unforgotten
19. Halo 2, video game music: Delta Halo Suite: Penance, Wage, Leonidas, Dust and Bones
20. Halo 2, video game music: Sacred Icon Suite: Cortege, Opening Volley, Veins of Stone
21. Halo 2, video game music: Reclaimer
22. Halo 2, video game music: High Charity Suite: Rue and Woe, Respite, Antediluvia, Pursuit of Truth
23. Halo 2, video game music: Finale: Great Journey, Thermopylae Soon
24. Halo 2, video game music: Epilogue: Beholden, Road to Voi, Subsume

Disc: 3 (registered with ASCAP by MS):

1. Halo 3, video game music: Luck

2. Halo 3, video game music: Released
3. Halo 3, video game music: Infiltrate
4. Halo 3, video game music: Honorable Intentions
5. Halo 3, video game music: Last of the Brave
6. Halo 3, video game music: Brutes
7. Halo 3, video game music: Out of Shadow
8. Halo 3, video game music: To Kill a Demon
9. Halo 3, video game music: This is Our Land
10. Halo 3, video game music: This is the Hour
11. Halo 3, video game music: Dread Intrusion
12. Halo 3, video game music: Follow Our Brothers
13. Halo 3, video game music: Farthest Outpost
14. Halo 3, video game music: Behold a Pale Horse
15. Halo 3, video game music: Edge Closer
16. Luck
17. Released
18. Infiltrate
19. Honorable Intentions
20. Last of the Brave
21. Brutes
22. Out of Shadow
23. To Kill a Demon
24. This is Our Land
25. This is the Hour
26. Dread Intrusion
27. Follow Our Brothers
28. Farthest Outpost
29. Behold a Pale Horse
30. Edge Closer

Disc: 4 (registered with ASCAP by MS):

1. Three Gates
2. Black Tower
3. One Final Effort
4. Gravemind
5. No More Dead Heroes
6. Keep What you Steal
7. Halo Reborn
8. Greatest Journey
9. Tribute
10. Roll Call
11. Wake Me When You Need Me
12. Legend
13. Choose Wisely
14. Never Forget
15. Finish the Fight
16. LvUrFR3NZ, song
17. Halo 3, video game music: Three Gates
18. Halo 3, video game music: Black Tower
19. Halo 3, video game music: One Final Effort
20. Halo 3, video game music: Gravemind
21. Halo 3, video game music: No More Dead Heroes
22. Halo 3, video game music: Keep What you Steal

23. Halo 3, video game music: Halo Reborn
24. Halo 3, video game music: Greatest Journey
25. Halo 3, video game music: Tribute
26. Halo 3, video game music: Roll Call
27. Halo 3, video game music: Wake Me When You Need Me
28. Halo 3, video game music: Legend
29. Halo 3, video game music: Choose Wisely
30. Halo 3, video game music: Movement
31. Halo 3, video game music: Never Forget
32. Halo 3, video game music: Finish the Fight

Halo Wars OST (registered with ASCAP by MS):

1. Spirit of Fire
2. Bad Here Day
3. Through Your Hoops
4. Under Your Hurdles
5. Quite the Vacation Resort
6. Bad Here Day (Shield World Version)
7. We're Burning Sunshine

Halo 4 OST (MS registered with ASCAP but OS not listed as composers)

1. Main Menu Music
2. To Galaxy
3. 117
4. Never Forget (Midnight Version)

Halo 5 OST:

1. Halo Canticles (registered with ASCAP by MS)
2. The Trials (registered with ASCAP by MS)
3. Blue Team (registered with ASCAP by MS)
4. Light is Green (MS registered with ASCAP but OS not listed as composers)
5. Rock and Ice (MS registered with ASCAP but OS not listed as composers)
6. Argent Moon (MS registered with ASCAP but OS not listed as composers)
7. Scavengers (MS registered with ASCAP but OS not listed as composers)
8. Osiris Suite Act 1 (MS registered with ASCAP but OS not listed as composers)
9. Osiris Suite Act 3 (MS registered with ASCAP but OS not listed as composers)
10. Osiris Suite Act 4 (MS registered with ASCAP but OS not listed as composers)

Halo Legends OST (registered with ASCAP by MS):

1. Ghosts of Reach
2. Brothers in Arms
3. Truth and Reconciliation
4. Opening Suite 1
5. Opening Suite 2
6. Halo
7. Deperate Measure
8. Cairo Suite 1
9. Machines and Might
10. Remembrance
11. Impend
12. The Maw
13. Unforgotten
14. High Charity Suite 2

15. Sacred Icon Suite 2
16. High Charity Quartet
17. Rescue Mission
18. Here in Peril
19. Out of Darkness
20. The Last Spartan
21. Earth City
22. Finale 2

Halo Wars 2 OST (MS registered with ASCAP but OS not listed as composers):

1. Heads up Display :10, 2:55
2. Excision 2:25
3. Incision 1:25

Killer Instinct Game and OST (MS registered with ASCAP but OS not listed as composers):

1. The Champion of Sanghelios

Halo Infinite (Not registered with ASCAP):

- Announcement Trailer Music
- The Making of Halo Infinite Announcement Trailer
- Discover Hope
- Set a Fire in Your Heart
- Reverie
- Through the Trees
- Step Inside
- Halo Outpost Discovery
- Halo Infinite Gameplay Demo Music
- Complete Soundtrack for the Flight Music

Miscellaneous (Not registered with ASCAP):

- Halo Infinite Multiplayer Reveal Trailer Music
- Discover Hope Trailer Music
- Halo Infinite Story Trailer Music
- Halo in Fortnite
- Halo Fortnite Commercial Music
- New Xbox Commercial Music
- Epic Games Commercial Music
- Fortnite Master Chief Reveal Trailer – Game Awards 2020 Music
- 343 Corporate Video Music
- Halo 1 Remastered Cinematics Music
- Halo 2 Remastered Cinematics Music
- Halo Minecraft Music
- Halo: The Fall of Reach Movie
- Halo Landfall 3 films by Neil Blomkamp
- Halo Nightfall (Ridley Scott Producer)
- Halo Nightfall Trailer Music

These are the pieces of which I'm aware. I believe that this is still an incomplete list. Microsoft/343 should have a more complete record of all the Halo music that they've used, re-recorded, or produced derivative works.

EXHIBIT 14

To: Marty O'Donnell[martyod@bungie.com]
From: mike@michaelsalvatori.net
Sent: Tue 12/8/2009 6:43:51 PM
Subject: RE: ascap

To the grave...

----- Original Message -----

Subject: RE: ascap
From: Marty O'Donnell <martyod@bungie.com>
Date: Tue, December 08, 2009 7:22 pm
To: "mike@michaelsalvatori.net" <mike@michaelsalvatori.net>

Yes. Don't forget these must be under lock and key until further notice.

marty

From: mike@michaelsalvatori.net [<mailto:mike@michaelsalvatori.net>]
Sent: Tuesday, December 08, 2009 5:02 PM
To: Marty O'Donnell
Subject: RE: ascap

Done. Could you drop a copy in my folder???

----- Original Message -----

Subject: ascap
From: Marty O'Donnell <martyod@bungie.com>
Date: Tue, December 08, 2009 1:11 pm
To: "mike@michaelsalvatori.net" <mike@michaelsalvatori.net>

Mike. Let's call the VGA trailer music "Lone Wolf" and register it with ASCAP.
Microsoft Publishing, O'Donnell/Salvatori composers. 2:27

Marty

EXHIBIT 15

Bungie Projects Audio Director

- **Myth The Fallen Lords** – 1996 to 1997. Jason Jones project lead.
- **Myth 2 Soulblighter** – 1997 to 1998. Tuncer Deniz project lead. Fired in early 1999.
- **Myth Total Codex** – 1999. Myth1&2 and Chimera, Jaime Griesemer lead.
- **Halo1 Trailer at MacWorld '99 with Steve Jobs**. First presentation to the public of Halo and the “iconic” Halo theme. Mostly Joe Staten and me.
- **Halo1 Theater Movie**. 2000 at E3. Caused MS to buy Bungie. Mostly Joe Staten and me.
- **Oni** – 1999 to 2001. Michael Evans project lead. Left Bungie in 2005(?) after being frustrated with MS profit sharing. Ended up in a business with Pete Parsons after Pete quit MS. Currently works at Apple.
- **Halo Combat Evolved** – 1998 to 2001. Jason Jones project lead.
- **Halo2** - 2001 to 2004. Jason Jones project lead. He left the project for a full year in 2003. Finished by Paul Bertone and Joe Staten.
- **Halo3** - 2004 to 2007. No project lead. Shared between several of us including Paul Bertone, Marcus Lehto, Jaime Griesemer, Jonty Barnes, and me.
- **Halo3 ODST** – 2007 to 2008. Paul Bertone and Joe Staten project leads.
- **Halo Reach** – 2007 to 2010. Marcus Lehto project lead.
- **Destiny** – 2008 to 2014. Jason Jones project lead.
- **Music of the Spheres** – 2011 to 2012 (still unreleased). Marty O'Donnell project lead.
- **Halo Original Soundtracks** – Halo 1 2002, Halo 1 Special Edition 2003, Halo 2 Volume 1 2004, Halo 2 Volume 2 2006, Halo 3 2008, Halo 3 ODST 2009, Halo Reach 2010. Marty O'Donnell project lead.